MONTANA LEGISLATIVE HISTORY

Chapter 449 2005

Bill H _____ SB 146 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-31	C	Hearing Date(s)	1-18	C
	4-1	C		1-25	C
		C		2-14	C
		C	Finance & Claims	3-8 3-18	C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Free Conference Committee 4-13

SB 146 INTRODUCED BY MCGEE *LC0214 DRAFTER: HEFFELFINGER*

STATEWIDE PUBLIC DEFENDER SYSTEM

BY REQUEST OF LAW AND JUSTICE INTERIM COMMITTEE

7/21	FISCAL NOTE NEEDED		
11/17	FISCAL NOTE REQUESTED (LOCAL GOVERNMENT FISCAL IMPACT)		
12/22	FISCAL NOTE RECEIVED (LOCAL GOVERNMENT FISCAL IMPACT)		
12/22	INTRODUCED		
12/29	REFERRED TO JUDICIARY		
12/29	FISCAL NOTE REQUESTED		
1/14	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE SIGNED		
1/17	FISCAL NOTE PRINTED		
1/18	HEARING		
1/25	HEARING		
2/14	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	12	0
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	REVISED FISCAL NOTE REQUESTED		
2/19	2ND READING PASSED ON VOICE VOTE	50	0
2/19	TAKEN FROM 2ND READING; REREFERRED TO FINANCE AND CLAIMS	50	0
2/21	REVISED FISCAL NOTE RECEIVED		
2/21	REVISED FISCAL NOTE SIGNED		
2/22	REVISED FISCAL NOTE PRINTED		
3/08	HEARING		
3/18	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	17	2
3/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/18	REVISED FISCAL NOTE REQUESTED		
3/22	REVISED FISCAL NOTE RECEIVED		
3/22	REVISED FISCAL NOTE SIGNED		
3/22	REVISED FISCAL NOTE PRINTED		
3/22	2ND READING PASSED ON VOICE VOTE	50	0
3/23	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
3/24	REFERRED TO JUDICIARY		
3/31	HEARING		
4/01	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	18	0
4/01	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/05	REVISED FISCAL NOTE REQUESTED		
4/07	REVISED FISCAL NOTE RECEIVED		
4/07	2ND READING CONCURRED	88	12
4/08	3RD READING CONCURRED	87	10
	RETURNED TO SENATE WITH AMENDMENTS		
4/09	2ND READING HOUSE AMENDMENTS NOT CONCURRED ON VOICE VOTE	50	0
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	FREE CONFERENCE COMMITTEE APPOINTED		
4/12	REVISED FISCAL NOTE PRINTED		
4/13	HEARING		
4/13	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/13	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/15	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED ON VOICE VOTE	50	0
4/16	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	94	5
4/16	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	89	11
4/16	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/18	SENT TO ENROLLING		
4/20	RETURNED FROM ENROLLING		
4/21	SIGNED BY PRESIDENT		
4/21	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
4/28	CHAPTER NUMBER ASSIGNED		

CHAPTER NUMBER 449
EFFECTIVE DATE: 4/28/2005 - SECTIONS 1-16, 20-23, 30-33, 68-73, AND 75-80
EFFECTIVE DATE: 7/01/2006 - SECTIONS 17-19, 24-29, 34-67, AND 74

SB 147 INTRODUCED BY D. RYAN *LC0804 DRAFTER: MCCLURE*

SENATE BILL NO. 146

INTRODUCED BY D. MCGEE

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A COST-SHARING FORMULA FOR STATE, COUNTY, AND CITY FUNDING; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 18-4-132, 26-2-501, 26-2-505, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-112, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4 and 6 through 14] may be cited as the "Montana Public Defender Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4 and 6 through 14], the following definitions apply:

(1) "Commission" means the public defender commission established in [section 5].

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Indigent" means that a person has been determined under the provisions of [section 13] to be indigent or partially indigent and financially unable to retain private counsel.

(4) "Office" means the office of state public defender established in [section 7].

(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of [sections 1 through 4 and 6 through 14].

(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to [sections 1 through 4 and 6 through 14].

NEW SECTION. **Section 3. Purpose.** The purposes of [sections 1 through 4 and 6 through 14] are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; and

(5) ensure that public funding of the statewide public defender system is provided and managed in a fiscally responsible manner.

NEW SECTION. **Section 4. Statewide system -- structure and scope of services -- assignment of counsel at public expense.** (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in [section 10], establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in [section 3].

(3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission may establish protocols to provide that public defenders work with a court to establish assignment rosters or other methodologies to ensure that the office makes appropriate assignments in a timely manner.

(4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4 and 6 through 14] in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to [section 13], as follows:

(i) for a person charged with a felony or charged with a misdemeanor for

which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in [section 15];

(iv) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(v) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vi) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(viii) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(ix) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in [section 15];

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification

requirements under the Parental Notice of Abortion Act, as provided in 50-20-212;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of [section 11] to provide public defender services under [sections 1 through 4 and 6 through 14] may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

NEW SECTION. **Section 5. Public defender commission.** (1) There is a public defender commission.

(2) The commission consists of seven members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents a Montana association for criminal defense lawyers; and

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house.

(3) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(4) Members shall serve staggered 3-year terms.

(5) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(a) the commission and chief public defender shall hire their own staff, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(b) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (5)(b) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(6) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in [section 7], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the

United States district attorney or an assistant United States district attorney, or a law enforcement official.

(7) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(8) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members.

NEW SECTION. **Section 6. Commission -- duties -- report -- rules.** The commission shall supervise and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14], the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in [section 7], appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) performance criteria; and

(f) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to hire permanent staff;

(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of [sections 1 through 4 and 6 through 14]; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must include detailed expenditure, caseload, and workload data by court and case type and any recommendations for amending the cost allocation factors provided for in [section 14] in order to include a cost allocation factor based on actual caseload and the associated workload.

NEW SECTION. **Section 7. Office of state public defender -- personnel -- compensation -- expenses.** (1) There is an office of state public defender. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall

establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) Subject to the commission's approval, the chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of [sections 1 through 4 and 6 through 14], including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in [section 9];

(v) deputy public defenders, as provided in [section 10]; and

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) Beginning July 1, 2006, the following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in [section 12].

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

NEW SECTION. **Section 8. Chief public defender -- duties.** In addition to the duties provided in [section 7], the chief public defender shall:

(1) act as secretary to the commission and provide administrative staff support to the commission;

(2) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to [sections 1 through 4 and 6 through 14];

(3) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;

(4) ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(5) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(6) establish administrative management procedures for regional offices;

(7) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience and training and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

(8) establish and supervise a training and performance evaluation program for nonattorney staff members and contractors;

(9) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do

not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(10) maintain a minimum client caseload, as determined by the commission;

(11) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

(12) perform all other duties assigned by the commission pursuant to [sections 1 through 4 and 6 through 14].

NEW SECTION. **Section 9. Training program -- coordinator.** (1) There is within the office a position of training coordinator for public defenders.

(2) The chief public defender shall appoint the training coordinator from a list of three names submitted by the president of the state bar of Montana.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender;

(e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and

(f) perform other duties assigned by the chief public defender.

NEW SECTION. **Section 10. Regional offices -- deputy public defenders -- office space.** (1) Beginning July 1, 2006, the chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each

regional office established pursuant to [section 4(2)].

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) consult with the courts within the region and establish agreed-upon protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of [section 8(7)];

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in [section 11] and authorized by the chief public defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation.

NEW SECTION. **Section 11. Contracted services -- rules.** (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) Beginning July 1, 2006, the state office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to

this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

(3) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(4) Contracting for public defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney access to support services, such as paralegal and investigator services;

(c) attorney caseload, including the amount of private practice engaged in outside the contract;

(d) reporting protocols and caseload monitoring processes;

(e) a process for the supervision and evaluation of performance;

(f) a process for conflict resolution; and

(g) continuing education requirements in accordance with standards set by the commission.

(5) The chief public defender and deputy public defenders shall provide for contract oversight and enforcement to ensure compliance with established standards.

(6) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender services and for others contracted to provide nonattorney services.

NEW SECTION. **Section 12. Public defender account.** (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Beginning July 1, 2006, money to be deposited in the account also includes:

(a) the county and city share of funding for the system, as provided in [section 14];

(b) the processing fee and any contributions required pursuant to [section 13];

(c) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(d) payments for public defender costs ordered pursuant the Montana Youth Court Act; and

(e) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104.

NEW SECTION. **Section 13. Eligibility -- processing fee -- determination of indigence and partial indigence -- contributions toward costs -- rules.** (1) (a) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court.

(2) (a) A person for whom a public defender has been assigned or for whom assignment of a public defender is sought shall, within a reasonable amount of time, complete and return to personnel designated pursuant to commission policy an application and a $25 processing fee payable to the office.

(b) The processing fee must be reduced or waived by the office if payment

of the fee would result in a substantial financial hardship to the applicant.

(c) An applicant who is eligible for a public defender only because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit.

(d) The application, financial statement, and affidavit must be on a form prescribed by the commission.

(e) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(f) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application or pay the processing fee. However, a court may find a person in contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant in a proceeding listed in [section 4(4)(a)] must be screened for indigence as provided in subsection (4) of this section or for partial indigence as provided in subsection (5) of this section.

(4) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); and

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(5) An applicant is partially indigent if:

(a) the applicant's gross household income, as defined in 15-30-171, is higher than the percentage of poverty set in subsection (4)(a) but lower than 200%

of the federal poverty guidelines; and

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(6) (a) Except as provided in subsection (6)(b), an applicant determined to be partially indigent under subsection (5) shall make a contribution toward the cost of public defender services. The contribution amount must be a total flat dollar amount determined according to a sliding scale adopted by the commission by rule. The sliding scale must be based on the applicant's gross household income, as defined in 15-30-171, and on factors weighted according to the type and complexity of the case.

(b) The contribution amount required under this subsection (6) may be reduced or waived by a court if the court determines that the contribution amount constitutes a substantial financial hardship to the applicant or the members of the applicant's household.

(c) The court may find that failure to make the contribution required under this subsection (6) constitutes civil contempt of court. A default in the payment of the contribution may be collected by any means authorized by law for the enforcement of a judgment.

(7) A determination of indigence or partial indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(8) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(9) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if

the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may allow contributions under subsection (6) to be made in installments;

(d) may provided for the use of other public or private agencies or contractors to conduct eligibility screening and collect processing fees and contribution amounts payable under this section;

(e) must avoid unnecessary duplication of processes and provide that:

(i) the financial eligibility determinations performed under other public assistance programs on behalf of the applicant are used to the extent feasible when determining the applicant's indigence pursuant to this section; and

(ii) the procedures for collecting the processing fee and contributions required pursuant to this section use collection processes already in place to the extent feasible; and

(f) must prohibit individual public defenders from performing eligibility screening or collection activities pursuant to this section.

(10) The processing fee and contributions paid under this section must be deposited in the account established in [section 12].

NEW SECTION. **Section 14. Legislative findings -- cost-sharing.** (1) The legislature finds that protecting the constitutional rights of persons entitled by law to effective assistance of counsel at public expense is the obligation of the state, each county, and each city operating a court where counsel must be assigned to eligible persons. The legislature further finds that enactment of a statewide public defender system funded with pooled resources is the most effective and efficient way of ensuring the provision of effective assistance of counsel in a manner that meets state, county, and city obligations.

(2) Beginning July 1, 2006, funding for the system must be shared by the state, counties, and cities as provided for in this section.

(3) Of the total biennial budget for the system:

(a) total state funding, including funds received by the state from the federal government or other sources, must equal 77.7%;

(b) total county funding must equal 15.6%; and

(c) total city funding must equal 6.7%.

(4) (a) Each county shall annually contribute to the total budget for the system the amount calculated as provided in this subsection (4).

(b) For each county, the commission shall calculate the amount to be contributed by the county by calculating specific allocation factors for the county as follows:

(i) a population allocation factor for the county must be calculated by dividing the county's population by the state population based on the most current population data available from the United States census bureau;

(ii) a taxable value allocation factor for the county must be calculated by dividing the county's taxable value by the total taxable value of all counties as reported for the previous year in the latest biennial report published by the Montana department of revenue pursuant to 15-1-205; and

(iii) a crime rate allocation factor for the county must be calculated by dividing the total number of index crimes, as defined by the Montana board of crime control provided for in 2-15-2006, committed in the county by the total number of index crimes committed in the state based on the latest statistics available for the previous year from the Montana board of crime control.

(c) A total allocation factor for the county must be calculated by adding the allocation factors determined under subsection (4)(b) and dividing the sum by three.

(d) Each county's share of the budget must be calculated by multiplying the total biennial budget for the office by the total county funding percentage specified in subsection (3)(b) and multiplying the product by the total allocation factor for the county determined under subsection (4)(c).

(5) (a) Each city with a city or municipal court shall annually contribute to the total budget for the system the amount calculated as provided in this subsection (5).

(b) For each city, the commission shall calculate the amount that the city is required to contribute by calculating specific allocation factors for the city as follows:

(i) a population allocation factor for the city must be calculated by dividing the city's population by the state population based on the most recent population data available from the United States census bureau; and

(ii) a taxable value allocation factor for the city must be calculated by dividing the city's taxable value by the total taxable value of all cities as reported for the previous year in the latest biennial report published by the Montana department of revenue pursuant to 15-1-205.

(c) A total allocation factor must be calculated by adding the allocation factors determined under subsection (5)(b) and dividing the sum by two.

(d) Each city's share of the budget must be calculated by multiplying the total biennial budget for the office by the total city funding percentage specified in subsection (3)(c) and multiplying the product by the total allocation factor for the city determined under subsection (5)(c).

(6) The formulas used in subsections (4) and (5) must be recalculated each biennium and may not be recalculated annually.

(7) (a) By June 30 of each fiscal year, the chief public defender shall notify each city and county of its proportional share of funding and shall invoice each city and county for that amount.

(b) The state treasurer may deduct the payment amount from the city's or county's entitlement share to be allocated to the city or county pursuant to 15-1-121. However, a shortfall in the city or county entitlement share does not relieve the city or county from its funding obligation pursuant to this section.

NEW SECTION. **Section 15. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), upon request or if the court, in its own discretion, determines that appointment or assignment of counsel is in the

best interest of justice, the court shall immediately appoint or assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child, youth, or guardian ad litem involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) Beginning July 1, 2006, the court's action pursuant to subsection (2) must be to order the office of state public defender, provided for in [section 7], to immediately assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], pending a determination of eligibility pursuant to [section 13].

Section 16. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the employees in the positions listed in [section 7(3)(a)], who are appointed by the chief public defender."

Section 17. Section 3-5-511, MCA, is amended to read:

"3-5-511. ~~Procedure in reference to witnesses'~~ Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in [section 2], and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of

miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as ~~provided in 3-5-901 and 3-5-902~~ follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in [section 7]."

Section 18. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of proceedings -- costs. (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of $2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, except as otherwise provided in this section.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) (a) If the judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the ~~state~~ office of court administrator as provided in 3-5-901.

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the office of the attorney general.

~~(4)~~(c) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(d) In civil cases, all transcripts required by the county must be furnished~~,~~ and only the reporter's actual costs of preparation may be paid by the county.

~~(5)~~(4) (a) If ~~it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript~~ a public defender, as defined in [section 2], requests a transcript, ~~it~~ the transcript must be furnished to the ~~party~~ public defender and paid for by the state office of public defender, as provided in ~~3-5-901~~ [section 7].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901."

Section 19. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the ~~state~~ office of court administrator shall fund ~~all~~ district court costs, except as provided in subsection ~~(4)~~ (3). These costs must be paid under guidelines adopted pursuant to 3-1-1601 and include ~~but are not limited to~~ the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) except as provided in [section 7(5)], the following expenses in criminal cases~~,~~:

(i) fees for transcripts of proceedings, as provided in 3-5-604~~, expenses for indigent defense that are paid under contract or at an hourly rate, and expenses for psychiatric examinations~~;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric evaluation under 46-14-202, the cost of the examination only, as provided in 46-14-202(4); and

(v) for a psychiatric evaluation under 46-14-221, cost of the examination and other associated expenses, as provided in 46-14-221(5);

(c) except as provided in [section 7(5)], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in [section 7(5)], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in [section 7(5)], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child

advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

~~(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and related expenses for counsel appointed by the court;~~

(f) except as provided in [section 7(5)], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in [section 7(5)], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors~~, but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125~~; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5~~, and the costs of providing youth court office, courtroom, and other space as provided in 3-1-125~~.

~~(2) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund and directly pay the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.~~

~~(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1)~~

(2) If a cost is not paid directly by the office of court administrator, the ~~state~~ county shall pay the cost and the office of court administrator shall reimburse ~~counties,~~ the county within 30 days of receipt of a claim~~, for the~~

~~following:~~

~~(a) in district court criminal cases:~~

~~(i) expenses for indigent defense that are not paid under subsection (1)(b);~~

~~(ii) juror fees and necessary expenses; and~~

~~(iii) witness fees and necessary expenses as provided in 46-15-116;~~

~~(b) in proceedings under subsection (1)(e):~~

~~(i) expenses for appointed counsel for the youth; and~~

~~(ii) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and~~

~~(c) costs of juror and witness fees and witness expenses before a grand jury~~.

~~(4)~~(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

~~(a) one-half of the salaries of county attorneys;~~

~~(b) salaries of deputy county attorneys;~~

~~(c) salaries of employees and expenses of the offices of county attorneys;~~

~~(d)~~(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

~~(e)~~(b) costs of providing and maintaining district court office space; or

~~(f)~~(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 20. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services

from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction;

(h) a claims adjuster; or

(i) a court reporter appointed as an independent contractor under 3-5-601.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(8) This chapter does not apply to contracting under [section 11] of the Montana Public Defender Act."

Section 21. Section 26-2-501, MCA, is amended to read:

"26-2-501. Witnesses in courts of record and before certain court officers. (1) ~~Witness~~ Except as provided in 26-2-505 and subsection (2) of this section, witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, $10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, ~~no~~ an officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana ~~shall~~ may not receive any per diem when testifying in a criminal proceeding, and ~~no~~ a witness ~~shall~~ may not receive fees in ~~any~~ more than one criminal case on the same day."

Section 22. Section 26-2-505, MCA, is amended to read:

"26-2-505. Expert witnesses -- authorization for additional compensation. ~~An~~ (1) Except as provided in subsection (2), an expert is a witness and receives the same compensation as a witness.

(2) The court may authorize additional compensation for a witness upon request of the prosecution or defense."

Section 23. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing ~~in civil actions~~ -- exceptions. ~~The~~ (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused ~~him~~ the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in [section 2], the fees and expenses must be paid by the office of state public defender as provided in [section 7(5)].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in [section 2], but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 24. Section 26-2-508, MCA, is amended to read:

"26-2-508. Witnesses ~~on behalf of~~ for state, ~~or~~ county, or public defender -- advance payment not required. The attorney general, ~~or~~ any county attorney, or any public defender, as defined in [section 2], is authorized to cause subpoenas to be issued and compel the attendance of witnesses ~~on behalf of the state or county~~ without paying or tendering fees in advance to either officers or witnesses~~;~~. ~~and any~~ A witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid."

Section 25. Section 26-2-510, MCA, is amended to read:

"26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 ~~shall~~ extend to all actions and proceedings brought in the name of the attorney general, ~~or~~ any other person or persons for the benefit of the state or county, or any other person or persons for the benefit of a public defender, as defined in [section 2]."

Section 26. Section 40-5-236, MCA, is amended to read:

"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters -- fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of parental responsibility and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child

is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys ~~appointed~~ assigned under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 27. Section 40-6-119, MCA, is amended to read:

"40-6-119. Right to counsel -- ~~payment of counsel fees and costs -- free~~ transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall ~~appoint~~ order the office of state public defender, pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to assign counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees ~~of counsel,~~ for experts~~,~~ and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604(4)."

Section 28. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the

unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C.

6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's ~~court-appointed~~ assigned attorney,

guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 29. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in

41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to

justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall ~~appoint~~ immediately provide for the appointment or assignment of an attorney as provided for in [section 15] to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint

one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

~~(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.~~

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in [section 15].

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to [section 15], to request the appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 30. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. ~~If~~ When a request for such a determination is made, if an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel ~~must be appointed by the court at the time that a request is made for a determination under this subsection~~ to represent the indigent parent in accordance with the provisions of [section 15]. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 31. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline

applies.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel as provided for in [section 15]. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why

continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 32. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- ~~right to counsel~~ -- no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.~~

~~(5)~~(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent.

~~(6)~~(5) There is no right to a jury trial at proceedings held to consider

the termination of a parent-child legal relationship."

Section 33. Section 41-3-1010, MCA, is amended to read:

"41-3-1010. Review -- scope -- procedures -- immunity. (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

(i) the safety of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether caseworkers have diligently provided services;

(iv) whether appropriate services have been available to the child and family on a timely basis; and

(v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must take place at times set by the board. The time limit must comply with the Adoption and Safe Families Act of 1997.

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed ~~attorney or~~ special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child's tribe if the child is an Indian, and other interested persons who are

authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for the placement and the appropriateness and safety of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the

district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings.

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

Section 34. Section 41-3-1012, MCA, is amended to read:

"41-3-1012. Presence of employees and participants at reviews and deliberations of board. (1) Unless excused from doing so by the board, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board reviews.

(2) The board may require the presence of specific employees of the department or any other agency or other persons at board reviews. If an employee fails to be present at the review, the board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the

court-appointed ~~attorney or~~ special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

(6) As used in this section, the following definitions apply:

(a) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.

~~(a)~~(c) "Presence" includes telephone participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required.

~~(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.~~

~~(c) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.~~"

Section 35. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. ~~The following expenses must be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:~~

(1) ~~reasonable compensation~~ Compensation for services and related expenses for counsel ~~appointed by the court~~ assigned for a party must be paid by the office

of state public defender provided for in [section 7].~~,~~

(2) ~~the expenses of~~ Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other ~~like~~ witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for ~~by law~~ in 26-2-506.~~,~~

(3) ~~reasonable~~ Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.~~; and~~

(4) ~~cost of~~ Costs for transcripts and printing briefs ~~on appeal~~ must be paid as provided for in 3-5-604."

Section 36. Section 41-5-112, MCA, is amended to read:

"41-5-112. Parental contributions account -- allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-446, 41-5-1501, or 41-5-1525 must be deposited in the account, except that contributions for public defender costs must be deposited in the public defender account established in [section 12].

(3) All money in the account established in subsection (1), except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

Section 37. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in [section 7], to assign counsel ~~must be appointed~~ for the youth ~~if~~

~~the parents or guardian and the youth are unable to provide counsel~~ pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], unless the right to ~~appointed~~ counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 38. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in [section 7], to assign counsel to represent the minor parent."

Section 39. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who

divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 40. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel~~,~~ and must be asked if the aid of counsel is desired.

(2) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, ~~is unable to employ counsel, and is entitled to have counsel assigned,~~ the court shall order the office of state public defender, provided for in [section 7], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of [section 13].

~~(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:~~

~~(a) the offense charged is a felony;~~

~~(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or~~

~~(c) the interests of justice would be served by assignment.~~"

Section 41. Section 46-8-104, MCA, is amended to read:

"46-8-104. ~~Appointment~~ Assignment of counsel after trial. Any court of record may order the office of state public defender, provided for in [section 7], to assign counsel, subject to the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if ~~he~~ the defendant, petitioner, or appellant desires counsel and is unable to employ counsel."

Section 42. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment ~~for court-appointed counsel~~ by defendant for assigned counsel. (1) ~~The~~ As part of or as a condition under a sentence imposed under the provisions of this title, the court may require a convicted defendant to pay the costs of ~~court-appointed~~ counsel ~~as a part of or a condition under the sentence imposed as provided in Title 46~~ assigned to represent the defendant.

(2) Costs must be limited to ~~reasonable compensation and~~ costs incurred by the ~~court-appointed counsel~~ office of state public defender, provided for in [section 7], for providing the defendant with counsel in the criminal proceeding.

(3) The court may not sentence a defendant to pay the costs ~~of court-appointed~~ for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 43. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of ~~court-appointed~~ assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~clerk of district court. The clerk of district court shall forward the payments to the department of revenue for deposit in the state general fund~~ office of state public defender, provided for in [section 7], and deposited in the account established in [section 12]."

Section 44. Section 46-8-115, MCA, is amended to read:

"46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of ~~court-appointed~~ assigned counsel defaults in payment of the costs or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of ~~court-appointed~~ assigned counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

Section 45. Section 46-12-210, MCA, is amended to read:

"46-12-210. Advice to defendant. (1) Before accepting a plea of guilty or nolo contendere, the court shall determine that the defendant understands the

following:

(a) (i) the nature of the charge for which the plea is offered;

(ii) the mandatory minimum penalty provided by law, if any;

(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, ~~one~~ an attorney will be ~~appointed~~ assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the defendant;

(c) that the defendant has the right:

(i) to plead not guilty or to persist in that plea if it has already been made;

(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

(iii) to confront and cross-examine witnesses against the defendant; and

(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 46. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or, if the examination cannot be done in the community, shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) ~~The~~ If the examination cannot be done without a commitment, the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) If the defendant is indigent, as defined in [section 2], or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the ~~state~~ office of court administrator as provided in 3-5-901. All other expenses incurred in connection with the examination, including costs of detention, custody, treatment, and transportation, must be paid by the county determined by the court to be the residence of the defendant at the time that the examination is ordered."

Section 47. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still

unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ facility of the department of public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the ~~state~~ office of court administrator as a district court expense as provided for in 3-5-901."

Section 48. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of ~~the~~ a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented

by a public defender, as defined in [section 2], a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in [section 2], witness costs must be paid by the office of state public defender as provided for in [section 7]."

Section 49. Section 46-15-116, MCA, is amended to read:

"46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title 26, chapter 2, part 5, except as otherwise provided in this section.

(2) The court, on motion by either party, may allow additional fees for expert witnesses.

~~(2)~~(3) The court may determine the reasonable and necessary expenses of subpoenaed witnesses for an indigent defendant not represented by a public defender, as defined in [section 2], and order the clerk of court to pay the expenses.

~~(3)~~(4) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by ~~statutory enactment~~ statute required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

~~(4)~~(5) The witness fees, costs, and expenses must be paid ~~by the state according to procedures required by the supreme court administrator under 3-5-902~~ as provided in 26-2-506."

Section 50. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video

communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 51. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender

is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of ~~court-appointed~~ assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on restorative justice principles."

Section 52. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of

guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs~~,~~ as provided in 46-18-232~~,~~ or payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition

or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo

contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 53. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court

order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel for a petitioner who qualifies for the ~~appointment~~ assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, [sections 1 through 4 and 6 through 14].

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in [section 2], and wishes to file a petition under this chapter, the court will ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of ~~appointed~~ assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) ~~appoint~~ order the office of state public defender to assign counsel to represent the person ~~if~~ pending a determination by the ~~court finds~~ office of state public defender that the person is indigent, as defined in [section 2], and that the person either has accepted the offer of ~~appointment~~ assigned counsel or is unable to competently decide whether to accept the offer of ~~appointed~~ assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after

a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the ~~court finds that the~~ petitioner is determined not to be indigent, deny or rescind any order requiring the assignment ~~appointment~~ of counsel.

(c) ~~The court may not appoint counsel~~ The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the ~~appointment~~ assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent ~~at the time that the court's determination is made under subsection (3)(b)~~ but ~~thereafter~~ becomes indigent at any subsequent stage of the proceedings, the court shall ~~appoint~~ order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel ~~appointed~~ assigned pursuant to this subsection (3) must be paid ~~as provided in 46-8-201~~ by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 54. Section 50-20-212, MCA, is amended to read:

"50-20-212. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to ~~court-appointed~~ assigned counsel and shall ~~provide the petitioner with~~ order the office of state public defender, provided for in [section 7], to assign counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall

issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition."

Section 55. Section 53-9-104, MCA, is amended to read:

"53-9-104. Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of

any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to ~~pay the costs and attorney fees of court-appointed~~ reimburse the office of state public defender, provided for in [section 7], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney ~~appointed~~ assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 56. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility -- hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall ~~appoint~~ order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to [section 13].

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided

to the residential facility screening team."

Section 57. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. ~~Counsel must be appointed for the minor at~~ At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in [section 7], to assign counsel for the minor."

Section 58. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- ~~appointment~~ assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to immediately assign counsel to represent the person at either the hearing or the trial, or both~~, and the counsel must be compensated pursuant to 3-5-901(1)(f)~~."

Section 59. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) ~~If a judge is available, the~~ The judge shall consider the petition~~, and if~~. If the judge finds no probable cause, ~~it~~ the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in [section 7], to immediately assign counsel ~~must be immediately appointed~~ for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent ~~and in the confirmation of the appointment of the attorney~~.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. ~~If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.~~ The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in [section 7], to immediately provide assigned counsel. The judge, through the clerk of court, may also order ~~must also direct~~ that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the ~~clerk's~~ order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the ~~appointment~~ assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge. ~~The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.~~"

Section 60. Section 53-24-302, MCA, is amended to read:

"**53-24-302. Involuntary commitment of alcoholics -- rights.** (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted

physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. ~~The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county.~~ The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there

is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or

(6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel ~~appointed by the court or provided by the court~~ pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall ~~require, by appointment if necessary,~~ order the office of state public defender, provided for in [section 7], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a

licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 61. Section 61-8-731, MCA, is amended to read:

"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than $1,000 or more than $10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).

(5) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 62. Section 72-5-225, MCA, is amended to read:

"**72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor ~~is to~~ must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if ~~he~~ the minor is 14 ~~or more~~ years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the ~~interest~~ interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, ~~it~~ the court may ~~appoint an attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor~~, giving consideration to the preference of the minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose~~."

Section 63. Section 72-5-234, MCA, is amended to read:

"**72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney.** (1) Any person interested in the welfare of

a ward or the ward, if 14 ~~or more~~ years of age or older, may petition for removal of a guardian on the ground that removal would be in the best ~~interest~~ interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may ~~appoint an attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel under the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor~~, giving consideration to the preference of the minor if the minor is 14 or more years of age~~."

Section 64. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in ~~his~~ the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of ~~his~~ the person's own choice or the court may, in the interest of justice, appoint an appropriate official or ~~attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent ~~him~~ the person in the proceeding~~,~~. The official or assigned counsel ~~who shall have~~ has the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated ~~shall~~ must be examined by a physician appointed by the court who shall submit ~~his~~ a report in writing to the

court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that ~~he~~ the person will be detained or reside if the requested appointment is made and submit ~~his~~ the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in ~~his~~ the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon ~~his~~ the person's condition. ~~He~~ The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or ~~his~~ the person's counsel ~~so~~ requests it."

Section 65. Section 72-5-322, MCA, is amended to read:

"72-5-322. Petition of guardian for treatment of ward. (1) If a guardian believes that the guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

(2) The ward is entitled to ~~an appointment~~ the assignment of counsel, in accordance with the provisions of the Montana Public Defender Act, [sections 1

through 4 and 6 through 14], and a hearing along with all the other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

Section 66. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If~~,~~ at any time in the proceeding~~,~~ the court determines that the interests of the minor are or may be inadequately represented, ~~it~~ the court may ~~appoint an attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor~~, giving consideration to the choice of the minor if 14 years of age or older~~. ~~A lawyer appointed by the court~~ Counsel assigned to represent a minor also has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of ~~his~~ the person's own choice, the court ~~must appoint a lawyer~~ shall order the office of state public defender, provided for in [section 7], to assign counsel to represent ~~him~~ the person pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]. Assigned counsel ~~who then~~ has the powers and duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to

interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **Section 67. Implementation.** (1) The governor shall appoint the members of the public defender commission established pursuant to [section 5] no later than July 1, 2005.

(2) The department of administration shall provide staff support to the commission beginning July 1, 2005, and continuing until the commission hires a chief public defender and until the chief public defender hires necessary staff for the commission and the office of state public defender.

(3) By December 31, 2005, the commission shall hire a chief public defender and issue any requests for proposals for consulting services and technical assistance that may be needed to help establish the office of state public defender provided in [section 7].

(4) Standards and procedures required to implement the provisions of [sections 1 through 4 and 6 through 14] must be established, and the office of state public defender must be opened by no later than July 1, 2006.

(5) During fiscal year 2006, a commission member is entitled to $50 for each day that the member spends conducting the official business of the commission.

(6) The department of administration shall assist the commission in developing a public defender information technology system that utilizes existing resources as much as possible and that interfaces with state executive branch, judicial branch, and local computer systems to the extent necessary and practicable to ensure that data required to effectively manage public defender

caseloads and track costs can be efficiently collected and analyzed.

NEW SECTION. **Section 68. Transition -- transfer of county and city employees to state employment -- rights.** (1) Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in [section 7]. Transferred employees become state employees on July 1, 2006.

(2) All transferred employees become subject to the state classification plan on July 1, 2006, except those specifically exempted under [section 7(2) and (3)(a)].

(3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.

(4) An employee's compensation may not be reduced as the result of the transfer to the state classification plan.

(5) This section does not preserve the right of any former county or city employee to any salary or compensation, including longevity benefits, that was not accrued and payable as of June 30, 2006.

(6) A transferred employee may elect to become a member of the state employee benefit plan beginning July 1, 2006, or remain on the employee's county or city benefit plan through the remainder of the plan year in effect on June 30, 2006. For an employee who elects to remain on a county or city benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county or city benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(7) Accumulated sick and vacation leave and years of service with a county or city must be transferred fully to the state and become an obligation of the state on July 1, 2006. On July 1, 2006, the counties and cities with office of public defender employees who are transferred to state employment by this section shall pay the state 25% of the sick leave accrual and 100% of vacation leave accrual for each employee who is transferred to state employment. The transferred

employees shall retain their accumulated sick and vacation leave. Any liability for accumulated compensatory time of employees who are transferred from county or city employment to state employment under this section is not transferred to the state and remains an obligation of the county or city that employed the employee prior to the transfer, subject to federal law and the county's or city's personnel policies.

(8) A transferred employee who is not already covered by the public employees' retirement system provided in Title 19, chapter 3, becomes a new member of the public employees' retirement system on July 1, 2006, and is subject to the provisions of Title 19, chapter 3.

(9) A collective bargaining agreement in effect on July 1, 2006, may not be construed as binding on the state. However, transferred employees are entitled to organize and collectively bargain pursuant to Title 39, chapter 31.

NEW SECTION. **Section 69. Transition of appellate defender commission and office.** (1) The terms of members of the appellate defender commission established in 2-15-1020 terminate on June 30, 2006, when that section is repealed.

(2) Commission staff in the office of appellate defender established pursuant to the Appellate Defender Act in 46-8-210 through 46-8-213 must be officially transferred to the office of state public defender established pursuant to [section 7]. The transfer is effective July 1, 2006, at which time the position of chief appellate defender becomes exempt from the classification and pay plan pursuant to 2-18-103 and [section 7(3)(a)(ii)]. The compensation and benefits of the chief appellate defender and other staff of the office of appellate defender may not be reduced as a result of this transfer and the chief appellate defender and other staff of the office of appellate defender remain entitled to all compensation, rights, and benefits accrued as of June 30, 2006.

(3) The appellate defender commission and the public defender commission shall work together to provide that the duties and responsibilities of the appellate defender commission and the caseload of the staff of the office of appellate defender are transferred to the public defender commission and office of

state public defender in a manner that ensures continuity of services. On July 1, 2006, all work of the appellate defender commission must officially be transferred to the supervision of the public defender commission and the chief public defender.

(4) Subject to the provisions of [section 5], a member of the appellate defender commission may be appointed by the governor to simultaneously serve on the public defender commission and the appellate defender commission until the appellate defender commission terminates pursuant to this section. A member serving on both commissions simultaneously is entitled to the compensation provided for the public defender commission in [section 67(5)] when engaged in the official duties of the public defender commission, provided that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period of time.

NEW SECTION. **Section 70. Rights to property.** (1) Subject to subsection (2), office equipment, computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the county or city and the state.

(2) (a) An employee of a county or city public defender office who becomes a state employee under [section 66] retains the right to use all property relating to the functions of the office and being used by the employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the employee may not use or divert money in a fund or account for a purpose other than as provided by law.

(b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts to the county or city.

(3) This section does not apply to property owned by the federal

government.

NEW SECTION. **Section 71. Interim report.** During fiscal year 2007, the public defender commission established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law and justice interim committee, and supreme court regarding the operation and administration of the statewide public defender system.

NEW SECTION. **Section 72. Repealer.** Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

NEW SECTION. **Section 73. Codification instruction.** (1) [Sections 1 through 4 and 6 through 14] are intended to be codified as a new title in the Montana Code Annotated.

(2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 5].

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

NEW SECTION. **Section 74. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 75. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 17 through 19, 23 through 28, 33 through 66, and 72] are effective July 1, 2006.

- END -

LOCAL GOVERNMENT FISCAL IMPACT

BILL #: **SB 146**

LC #: LC0214.01 **Title:** Montana Public Defender Act

Primary Sponsor: Senator McGee **Status:** Not introduced

Sponsor: Senator Dan McGee Date Chuck Swysgood, Budget Director 12-22-04 Date

This act **does NOT have** a significant fiscal impact on local government revenues or expenditures for which no specific means of financing has been provided in the bill.

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		**($2,756,171)**
Revenue:		**($3,003,877)**
Net Impact to Local Government:		**$247,706**

ASSUMPTIONS:

1. This cost analysis is based primarily on the work of the Public Defender subcommittee of the Law and Justice interim legislative committee.
2. Beginning in FY 2007, local governments will be relieved of approximately $2,756,171 in indigent defense services due to the proposal. Non-reimbursed district court services incurred by counties are estimated at $978,625, justice court costs are $1,040,000 and justice courts are $737,546.
3. In FY 2007, local governments will be required to pay for 22.3 percent of the Office's budget (15.6 percent by counties and 6.7 by cities). Based on the total cost of the public defender office (approx. $13,470,300) payments would total $3,003,877 in FY 2007.
4. The net impact to all local governments will be increased "expenditures" of $247,706 in FY07 ($3,003,877-$2,756,171). Although there may be winners and losers among local government units based on current expenditure patterns and allocations of city and county shares under the new funding algorithm, this cost spread across the cities and counties of Montana is not interpreted to violate 1-2-114, MCA.

SB 146

FISCAL NOTE

Bill #: SB0146 **Title:** Statewide public defender system

Primary Sponsor: Mcgee, D **Status:** As Introduced

Sponsor signature Date David Ewer, Budget Director 1/14/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$916,350	$2,535,987
State Special Revenue	$0	$3,063,207
Proprietary	$55,000	$25,000
Revenue:		
General Fund	$0	$0
State Special Revenue	$0	$3,063,207
Proprietary	$55,000	$25,000
Net Impact on General Fund Balance:	($916,350)	($2,535,987)

☒	Significant Local Gov. Impact	☐	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☒	Dedicated Revenue Form Attached	☒	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Office of the Chief Public Defender

New Office Costs

1. The function is administratively attached to the Department of Administration, but will be an independent office and held out as a new state agency.
2. Beginning in FY 2007, the state general fund will pay 77.7 percent of the office's costs. Local governments pay the remaining 22.3 percent (section 14) via deposits in the state special revenue fund created in section 12.
3. In FY 2007, local governments will be required to pay for 22.3 percent of the office's budget (15.6 percent by counties and 6.7 percent by cities). Based on the budget that follows, these payments would total $3,063,207 in FY 2007.
4. The Public Defender Commission will be appointed by June 1, 2005.
5. The commission will appoint the Chief Public Defender by September 1, 2005. The salary and benefits for the position are $71,298 in FY 2006 and $95,064 in FY 2007.

SB 146

6. The chief fills all positions by the end of FY 2006, with key positions needed to administer the office hired throughout FY 2006 per below:
    a. Administrative director – annual salary and benefits - $65,547 – 50 percent in FY 2006
    b. Assistant Public Defenders – 2.00 FTE with total salary and benefits of $131,094 – 25 percent in FY 2006
    c. Financial Manager - annual salary and benefits of $50,571 – 50 percent in FY 2006
    d. Contract managers – 2.00 FTE with total salary and benefits of $101,502 – 25 percent in FY 2006
    e. Administrative Support – 2.00 FTE with total salary and benefits of $68,571
    f. Accountant – annual salary and benefits - $50,751 – 25 percent in FY 2006
    g. Accounting Technicians – 3.00 FTE with total salary and benefits of $119,721 – FY 2007 only
    h. Indigence determination specialists – 5.00 FTE with total salary and benefits of $199,935 – FY 2007 only
    i. Information tech analysts – 2.00 FTE with total salary and benefits of $101,502 – 25 percent FY 2006
7. Operating Costs are assumed for 20.00 FTE in FY 2006 and all in FY 2007 including:
    a. Rent - $25,956 in FY 2006 and $98,880 in FY 2007
    b. Data network charges - $4,709 in FY 2006 and $17,947 in FY 2007.
    c. Furniture -- $30,900 in FY 2006.
    d. Personal computers - $27,831 in FY 2006
    e. Processing services -- $16,055 in FY 2006 and $61,158 in FY 2007.
    f. Job classifications for new and transferred staff - $30,000 in FY 2006.
    g. Travel -- $1,442 in FY 2006 and $2,884 in FY 2007.
    h. Fixed costs - $13,519 in FY 2006 and $51,500 in FY 2007.
    i. Training -- $102,528 in FY 2007.
    j. Commission meetings and travel equal $25,000 in FY 2006 and $15,000 in FY 2007.
    k. DoA support costs – payroll $25,000 each year.
    l. The existing appellate defender operating budget is increased 4 fold to handle more cases with existing FTE and current public defender FTE. Operating costs are assumed to increase by $192,290 in FY 2006 and $769,160 in FY 2007.
    m. Information technology – FY 2006 includes $20,000 for a needs assessment. FY 2007 includes $428,000 for the purchase of a case management system (NM system) and $64,200 for maintenance.

Current costs in District Court Assumption Transferred to Office:

8. Appointed attorneys – estimated cost of $5,122,378 in FY 2007.
9. County Public Defender staff – In FY 2007, 40.00 FTE attorneys and 22.75 FTE support staff will be transferred from the county offices to the state. Estimated personal services cost amount to $1,846,863 in FY 2007.
10. Contracted attorney costs are estimated to total $619,056 in FY 2007.
11. Private investigator costs are assume to be $216,978 in FY 2007
12. Witness fees that will transfer to the Office of the Chief Public Defender are assumed to be $153,443.
13. Legal fees and other court costs that will transfer to the Office of the Chief Public Defender are assumed to be $134,717.
14. The Judicial Branch will transfer 1.50 FTE to the Office of the Chief Public Defender effective July 1, 2007 per below:
    a. One Accounting Technician at annual salary and benefits of $28,595
    b. One half-time Administrative Assistant at annual salary and benefits of $15,130.

Other County Public Defender Costs transferred to State of Montana

15. County funded office costs are estimated to equal $674,157 in FY 2007.
16. Network connection costs and on-going connection costs are estimated at $86,468 in FY 2007.
17. Furniture replacements are expected to total $25,000 in FY 2007
18. Rent in county offices is assumed to be $206,000 in FY 2007.
19. Justice court costs assumed by the state are estimated to total $1,040,000 in FY 2007 (MaCO survey)
20. City and municipal court costs transferred to the state are estimated to be $737,546 in FY 2007.

Department of Administration

21. The Department of Administration will provide human resource services to the office. This fiscal note assumes classification costs to cover new and existing employees to the state system will total $30,000 in FY 2006. Ongoing payroll processing costs are estimated at $25,000 each year and require an additional 0.25 FTE per year with offsetting proprietary revenues.

Costs associated with representation for indigent parents in child abuse and neglect cases - new

22. These new costs would be incurred in the newly created Office of the Public Defender.
23. The Judiciary used case filing data for cases filed pursuant to 41-3-422, MCA, from the first 6 months of FY 2004 and doubled the filings to estimate a full fiscal year.
24. Currently the 1st, 2nd, 4th, 13th, 14th, 18th, 21st and 22nd Judicial Districts as well as some counties in the 7th and 12th Judicial Districts appoint counsel immediately. The cost in FY 2004 for public defender representation of the parents in these cases was $533,213. There were 241 filings in the first 6 months of FY 2004 in these districts. The average cost per case was $1,106. $533,213/(241 x 2).
25. The cost in FY 2004 for public defender representation of the parents in Judicial Districts, which don't appoint counsel immediately, was $279,360. There were 221 cases filed in the first 6 months of FY 2004 in the Judicial Districts where counsel was appointed at either the adjudication or dispositional hearing stage of the process. The average cost per case was $632. $279,360/(221x2).
26. The total increased cost is estimated at $209,508 per year. ($1,106-$632) x (221x2).
27. Assumptions are base on work done by the Legislative Fiscal Division and the Legislative Services Division for the Law and Justice Interim Committee in preparation for submission of this bill. The Office of the Court Administrator and the Department of Administration compiled additional information.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Public Defender Office - New		
FTE	5.50	84.25
Expenditures:		
Personal Services	294,140	2,874,486
Operating Expenses – Indigent parent	209,508	209,508
Operating Expenses	412,702	10,652,000
TOTAL	$916,350	$13,736,354
Funding of Expenditures:		
General Fund (01)	916,350	10,673,147
State Special Revenue (02)	0	3,063,207
TOTAL	$916,350	$13,736,354

Revenues:		
General Fund (01)	0	0
State Special Revenue (02) – Local Entity Payments	0	$3,063,207
TOTAL	$0	$3,063,207

Department of Administration

FTE	0.25	0.25
Expenditures:		
Personal Services	25,000	25,000
Operating Expenses	30,000	0
TOTAL	$55,000	$25,000
Funding of Expenditures:		
General Fund (01)	0	0
Proprietary	55,000	25,000
TOTAL	$55,000	$25,000
Revenues:		
Proprietary (06)	$55,000	$25,000

Supreme Court Operations (01)
Judicial Branch

FTE	0.00	(1.50)
Expenditures:		
Personal Services	$0	($43,725)
Funding of Expenditures:		
General Fund (01)	$0	($43,725)

District Court Operations (04)
Judicial Branch

Expenditures:		
Operating Expenses	$0	($8,093,435)
Funding of Expenditures:		
General Fund (01)	$0	($8,093,435)

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	($916,350)	($2,535,987)
State Special Revenue (02)	$0	$0
Proprietary (06)	$0	$0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Beginning in FY 2007, local governments will be relieved from approximately $2,756,171 in indigent defense services costs due to the proposal. Non-reimbursed district court services incurred by counties are estimated at $978,625, justice court costs are $1,040,000, and municipal courts are $737,546.
2. In FY 2007, local governments will be required to pay for 22.3 percent of the Office's budget (15.6 percent by counties and 6.7 percent by cities). Based on the budget above, these payments would total $3,063,207 in FY 2007.
3. The possible net impact to all local governments will be increased "expenditures" of $307,036 in FY 2007 ($3,063,207-$2,756,171). There will be winners and losers among local government units based on current expenditure patterns and allocations of city and county shares under the new funding algorithm.
4. The local entities will be required to pay, into a state special revenue account, the accrued sick leave and vacation leave totals for each assumed employee. It is impossible to determine the impact of this but anything paid in will reduce the counties balance sheet liabilities.

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)
Yes - It is possible that indigent people would benefit from these funds and have not paid local taxes.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?
County and city participation in the cost of the office will be tracked separately and used to offset operating costs.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)
Yes – it will fund local share as determined by the bill.

d) Does the need for this state special revenue provision still exist? ___Yes ___No (Explain)
Yes

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)
No, the funds will still be appropriated in the general appropriations act and presented to the joint appropriations subcommittee for review as well as the full legislature.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)
Yes – Funding of a portion of the State Public Defenders Office

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)
This fund is provided for in the proposed legislation and facilitates the receipt of funds from the local entities which are used to offset expenditures in the State Public Defenders Office.

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 18, 2005 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)

Members Excused: Sen. Brent R. Cromley (D)
Sen. Jeff Mangan (D)
Sen. Jim Shockley (R)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 220, SB 208 1/13/2005, SB 146, 1/12/2005;
Executive Action: None.

only the surcharge that had been increased. **SEN. PERRY** stated that it was his understanding that in doubling the surcharge from $25.00 to $50.00, it could be appropriate and proportional to double the $1.00 to $2.00 fee for administrative costs.

CHAIRMAN WHEAT asked **Mr. Morris** if he had any comments with regard to the effect the bill would have on Missoula, Billings and Great Falls. **Mr. Morris** replied that he would agree with Ms. Edwards and her assessment. He went on to say that he felt the concerns could be addressed by speaking with the judges and pointing out to them that they could not reduce a fine by offsetting the fine by the proposed $50.00 surcharge. He then stated that the surcharge was in addition to the fine, not included in the fine. **Mr. Morris** concluded that the State would not be getting the money except in cases where there was no victim program.

Closing by Sponsor:

SEN. PERRY thanked the proponents and opponents for a good hearing. He then addressed some of the objections. First the ability to pay, and pointed out that there was structure in the bill that would allow for the waiver of the charge if there was an inability to pay by the individual. Then he pointed out that each county, city or town could retain the charges for payment of the expenses of a victim and advocate program. **SEN. PERRY** indicated that all charges collected would be paid to the crime victims compensation and assistance program with the Department of Justice for deposit in the State's General Fund to be used to provide services to crime victims. This would happen only if a city or town did not have their own program.

{Tape: 1; Side: B; Approx. Time Counter: 1.5 - 19.4}

The Committee took a five minute recess.

HEARING ON SB 146

Opening Statement by Sponsor:

SEN. DANIEL MCGEE, SD 29, LAUREL, opened the hearing on **SB 146,** Statewide public defender system. **SEN.** MCGEE provided the Committee with three handouts explaining SB 146, which are attached as Exhibit 2, Exhibit 3 and Exhibit 4. SEN. **MCGEE** stated that SB 146 was introduced at the request of the Law and Justice Interim Committee. He explained that the Interim Committee had decided that the statewide system was intended to cover all of the courts, the Supreme Court, district courts,

courts of limited jurisdiction, municipal courts, justice courts and city courts. He further indicated that it had been decided that there would be no more than 11 regions within the statewide system, that they needed a clear definition of the term "indigence", and that adequate defense should be provided across the State. **SEN. MCGEE** informed the Committee that there was a proposed amendment for the bill. **MCGEE** proceeded to walk the Committee through the bill in its entirety and discussed all of the instances in which an indigent individual would have the ability to be represented by a public defender. **SEN. MCGEE** then made specific reference to new Sections 5 through 15. He then pointed out the specifics of Section 67, which would put constraints in the Code. **SEN. MCGEE** concluded his introduction by discussing the Fiscal Note.

EXHIBIT(jus13a02)
EXHIBIT(jus13a03)
EXHIBIT(jus13a04)

{Tape: 1; Side: B; Approx. Time Counter: 19.4 - 26.5}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.2}

Proponents' Testimony:

Mike McGrath, Attorney General, State of Montana, expressed his appreciation to the Law and Justice Interim Committee for their work on SB 146. He explained to the Committee that he had been a prosecuting attorney for 18 years and his experience with the criminal justice system. He went on to say that the bill was needed in the State and that his office had been involved in the discussions regarding the bill, and the reason for that involvement. **Attorney General McGrath** continued, saying that this was an issue that could be resolved as a matter of public policy and lends itself to a legislative resolution. He discussed a pending lawsuit, the lack of accountability both with legal issues and fiscal issues, and concluded by expressing his strong support for SB 146.

Tim Burton, City Manager, Helena, gave background information for the Lewis and Clark County Public Defender's Office. He went on to say that the bill would do the job correctly. He indicated that he did have some concerns which he felt should be addressed, however, the bill needed to move forward.

CHAIRMAN WHEAT indicated to all present that SB 146 would most likely go to a subcommittee to work out the details.

Ron Waterman, Attorney, Helena, informed the Committee that he was the lead attorney in the ACLU suit and that they stand in

support of SB 146. He went on to say that they felt that SB 146 was classic and important public legislation. He explained that there was no public defender system in the State, however, there were scattered remnants and parts of public defender programs in different parts of the State. **Mr. Waterman** then discussed the 1974 case which stated that all individuals accused of a major felony were entitled to counsel regardless of their ability to pay for such counsel. He then talked about 1976 and the National Defense Counsel coming to Montana to look at the public defender system and the report rendered by them. **Mr. Waterman** talked about the findings of the Counsel. This report is attached at Exhibit 5. **Mr. Waterman** went on to discuss **White v. Martz**, the report prepared by the National Legal Aid & Defender Association for use in that litigation and the conclusions of that report which is attached as Exhibit 6. **Mr. Waterman** stated that SB 146 was responsible legislation that would implement a Public Defender System, which would bring the State into Constitutional compliance. **Mr. Waterman** concluded by discussing the costs related to wrongful incarceration of individuals due to lack of adequate representation. He further commented on the fact that this type of legislation had been a long time in coming, however, the time had come and urged support for the bill.

EXHIBIT(jus13a05)
EXHIBIT(jus13a06)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 27.6}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.1}

Jacqueline Lenmark representing the American Civil Liberties Union, expressed strong support for SB 146 and strongly urged a do pass recommendation. She went on to say that this legislation would resolve some pending litigation. She further stated that SB 146 would create a model system. **Ms. Lenmark** then indicated that she had a couple of minor amendments which she explained. A copy of the proposed amendment is attached as Exhibit 7.

EXHIBIT(jus13a07)

Eric Schiedermayer, Montana Catholic Conference, discussed the effects of poverty on those individuals who find themselves involved with the justice system and the need for fair and equal treatment for all individuals no matter what their financial situation. He concluded by thanking the Committee for their efforts and asking for their favorable consideration of the bill.

Jani McCall, City of Billings, stated that they generally supported SB 146, however, they did have some concerns which she shared with the Committee. She stated that they felt there was a

difference between misdemeanors and felonies, the costs related, and the charges to the cities would be too high. She expressed the hope that they would be able to work with the Sponsor and Committee on looking at the revenue percentages. **Ms. McCall** then talked about the City Public Defender system in Billings which was working well and expressed their concerns regarding accountability and the loss of local control.

Joe Mazurek on behalf of the City of Great Falls, recognized the importance of SB 146. He then expressed their concerns regarding the funding mechanisms. **Mr. Mazurek** stated that he would look forward to working with the Subcommittee to make sure that they understand the funding mechanism and to make SB 146 the best bill possible.

Ed Tinsely on behalf of MACO and Lewis and Clark County, expressed their strong support for SB 146.

Linda Stoll representing Missoula County, stated that Missoula County stood in support of the idea of the Statewide Public Defender Office, however, they had a couple of issues regarding the funding of the program. She went on to say that they would appreciate the opportunity to work out their differences in the Subcommittee.

Anita Roessmann of the Montana Advocacy Program, expressed strong support for SB 146. She went on to say that it was a proud moment for Montana and thanked Chairman Wheat for his leadership and the Interim Committee for their work on the bill. **Ms. Roessmann** concluded by strongly supporting the amendment proposed by the ACLU.

Penny Strong, Chief Public Defender, Yellowstone County, stated that she stood in strong support of the legislation. She explained the need for consistent and adequate public defense representation statewide. **Ms. Strong** then discussed the need for statewide financial criteria, fiscal accountability and need for statewide supervision. She went on to talk about the need to pay the public defenders fairly and the need for parity with the prosecutors pay scale. **Ms. Strong** indicated that accountability was the key to success.

Gordon Morris, Director, Montana Association of Counties, thanked Senator McGee, Senator Wheat, Senator O'Neil and the rest of the legislators that had served on the Law and Justice Interim Committee. He stated that he was prepared to work with the Committee to fine tune the bill.

Charles Brooks representing the Yellowstone County Board of Commissioners, informed the Committee that all three Commissioners stood strongly behind the legislation and urged the Committee to give SB 146 a do pass. He went on to say that they would help the Subcommittee in anyway they could.

Jim Smith, Montana County Attorneys' Association, stated that they had worked with the Interim Committee on the legislation. He went on to say that the local prosecutors in the State of Montana support the bill and were willing to work with the Committee and others to take it through the rest of its legislative journey.

Alec Hansen, League of Cities and Towns, expressed support for SB 146. He went on to say that they wanted to work with the full Committee and the Subcommittee to work out details they were concerned about. He then talked about their concerns regarding the formula for depicting costs and asked for a spreadsheet that would show what the individuals cities and counties would spend under the proposed law. **Mr. Hansen** stated that they would like to see a change in Section 14, Part 7(b), regarding the money being automatically withdrawn from the Entitlement Account and explained why. He concluded by stated that SB 146 was a very important bill that needs to pass.

Jim Nugent, City Attorney, City of Missoula, stated that SB 146 was a very important bill, however, they were concerned about the financial impact. He went on to suggest that they consider some type of provision to provide funding. **Mr. Nugent** expressed his concerns for the impact of the bill on small cities and towns. He then requested that the Committee consider a companion bill which would provide annual training for prosecutors in small cities and towns to protect the community and the victims. He concluded by expressing strong support for SB 146 with some modification to the funding formula.

Opponents' Testimony: None.

Informational Testimony:

Deb Mattucci, Director, Montana Mental Health Association, talked about individuals with mental disorders and the need for their interests to be represented on the Commission. She then addressed the need for training for public defenders, which would address the special needs of these individuals.

{Tape: 3; Side: A; Approx. Time Counter: 2.1 - 28.3}

Questions from Committee Members and Responses:

SEN. O'NEIL asked **SEN. MCGEE** if the $5,000,000 requested by the Supreme Court was reflected in the Fiscal Note for SB 146. **SEN. MCGEE** replied that the first time he had heard about a possible supplemental was today. He went on to say that he did not have a clue regarding what it was trying to cover.

SEN. MANGAN asked **SEN. MCGEE** what the yearly cost of the Public Defender System would be. **SEN. MCGEE** responded that in general numbers he believed the cost would be in the neighborhood of 14 to 16 million dollars per year.

SEN. MANGAN referred to the 77 percent of the cost being picked up by the State and asked **SEN. MCGEE** if the remaining 16 plus percent would be picked up by the cities and counties. **SEN. MCGEE** stated that 15.6 percent would be paid by the counties and the 6.7 percent would be paid by the cities.

SEN. MANGAN asked **SEN. MCGEE** if the program would be in full effect in 2008 or 2007. **SEN. MCGEE** replied that he thought it would be in full operation in 2006.

SEN. MANGAN asked **David Ewer, Budget Director, State of Montana,** to walk through the General Fund impact of the bill. He went on to inquire as to how much of the funding would come from the General Fund and how much would come from other sources. **Mr. Ewer** stated that what had been presented was as accurate as they could get at the present time. He continued, stating that they were looking at 14 to 15 million per year with 77 percent being paid by the State.

SEN. MANGAN further asked **Mr. Ewer** if his office had any problem with invoicing and check method versus taking the cities share out of their Entitlement. **Mr. Ewer** replied that payment would be cleaner and easier if payment were taken from the Entitlement.

Closing by Sponsor:

SEN. MCGEE thanked everyone for their work and a good hearing. He proceeded to explain the hard work and research that had gone into putting SB 146 together. He further stated that by defining "indigence", everyone would know which individuals would be covered under this bill. **SEN. MCGEE** then discussed the necessity of having competent counsel to guarantee to the maximum extent possible that there will be adequate representation of counsel.

He went on to say that they had tried to put as much flexibility into the bill as possible to provide the best service they could.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 14.4}

ADJOURNMENT

Adjournment: 11:21 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus13aad0.PDF)

Montana State Legislature

FOR THE DEFENSE: ENACTING A STATEWIDE PUBLIC DEFENDER SYSTEM IN MONTANA

KFM 9011.62 L3 2004

Exhibit Number: 2

This exhibit exceeds 10-page maximum; therefore only a small portion of the exhibit is scanned for your research. The original exhibit is on file at the Montana Historical Society and may be viewed there

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton

EXHIBIT 3
DATE 1-18-05
SB 146

SB 146
Montana Public Defender Act

Problem:
Constitutionally and statutorily inadequate representation for people entitled to legal counsel at public expense.
Causes:

- **funding irregularities**
  - funding varies by county/city
  - instances of overworked, under paid public defenders
  - lack of access to same resources as prosecutors

- **lack of uniform standards**
  - determining eligibility for defender varies by court
  - defender performance criteria not set
  - training not funded, available, or required
  - experience not considered in assignments
    - -- complex felonies vs misdemeanors
    - -- abuse and neglect (civil)
    - -- involuntary commitments (civil or criminal)
    - -- juvenile (youth court, civil)

- **conflicting and competing interests**
  - judge supervising public defender, approving or disapproving expenses, pay
  - defenders lack independence

no uniform definition of indigence

Recommendations in SB 146:

Solutions:

- **independent commission/chief public defender**
  - judges no longer directly appoint defender
  - court orders office of state public defender to assign defender
  - caseloads monitored, assignments consider experience, training
  - expenses tracked, budget accountability required of chief/administrator

- **regional coordination by deputies**
  - flexible structure, mix of public and private
    - -- staffed offices (public employees)
    - -- contracting (private attorneys)
  - state office to provide help upon request ("John Connor" type office)
  - access to resources (paralegals, investigators, social workers, etc.)

- **statewide standards**
  - indigence/eligibility determination fair, even-handed
  - statewide training program, resources
  - performance standards, criteria

- **accountability / responsibility**
  - tracking costs and caseloads
  - state now spends $8.2 million annually
  - counties and cities spending $2.4 million annually

- **encompass all courts and all case types**
  - -- supreme court, district court, justice court, municipal/city court
  - -- criminal and civil cases where public defender is appointed

Exhibit No. 3
Date 1-18-05
Bill No. SB 146

EXHIBIT 4
DATE 1-18-05
SB 146

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Defense counsel's workload is controlled to permit the rendering of quality representation.

Defense counsel's ability, training, and experience match the complexity of the case.

The same attorney continuously represents the client until completion of the case.

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Defense counsel is provided with and required to attend continuing legal education.

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Exhibit No. 4
Date 1-18-05
Bill No. SB 146

EXHIBIT 5
DATE 1-18-05
SB 146

MONTANA

STATEWIDE DEFENDER

SYSTEMS DEVELOPMENT STUDY

Consultants

Morgan D. Harris, Esq.
John Darrah, Esq.
Stephen Huffaker, Esq.
Alan Parlaplano, Esq.
Prescott Eaton

December 1976

National Center for Defense Management
2100 M St., N.W., Suite 601
Washington, D. C. 20036
202-452-0620

A Project Of The
National Legal Aid and Defender Association

Law Enforcement Assistance Administration Contract 76-TA-99-0022

EXHIBIT 5
DATE 1-18-05
SB 146

I. RECOMMENDATIONS

The National Center for Defense Management makes the following recommendations:

1. THE MONTANA LEGISLATURE SHOULD CREATE A PUBLIC CORPORATION ENTITLED "THE MONTANA DEFENDER CORPORATION". ITS MANDATE SHOULD BE TO RUN A STATE-WIDE DEFENDER SYSTEM OF HIGH QUALITY AND TO DETERMINE THE DUTIES OF THE OFFICE OF MONTANA PUBLIC DEFENDER.

2. THE MONTANA PUBLIC DEFENDER SHOULD CONTRACT WITH ONE OR MORE ATTORNEYS IN EACH OF THE JUDICIAL CIRCUITS IN THE STATE TO HANDLE INDIGENT CRIMINAL DEFENSE ON A FULLTIME BASIS.

3. THE MONTANA PUBLIC DEFENDER SHOULD MAINTAIN A CENTRAL OFFICE WITHIN THE STATE TO HANDLE INDIGENT CRIMINAL APPEALS AND TO PROVIDE RESEARCH ASSISTANCE TO DEFENDER ATTORNEYS IN CIRCUITS THROUGHOUT THE STATE.

4. THE MONTANA PUBLIC DEFENDER SHOULD MAINTAIN (BY CONTRACT OR EMPLOYMENT) ONE OR MORE TRIAL ATTORNEYS WHO WILL BE AVAILABLE TO DEFENDANTS THROUGHOUT THE STATE FOR PROTRACTED OR COMPLICATED CRIMINAL CASES.

5. THE MONTANA PUBLIC DEFENDER SHOULD MAINTAIN A LIST OF ASSIGNED COUNSEL THROUGHOUT THE STATE WHO ARE ABLE AND WILLING TO TAKE INDIGENT CASES ON AN HOURLY FEE BASIS IN THE CASE OF CO-DEFENDANTS OR IN THE EVENT OF AN OVER-LOAD WHICH CANNOT BE HANDLED BY THE CIRCUIT DEFENDER.

6. THE MONTANA PUBLIC DEFENDER FOR THE STATE AND THE CIRCUIT DEFENDERS FOR THEIR INDIVIDUAL CIRCUITS SHOULD BE RESPONSIBLE FOR MOBILIZING COMMUNITY INVOLVEMENT WITH AND ON BEHALF OF OFFENDERS.

7. THE MONTANA PUBLIC DEFENDER SHOULD INSURE THAT SUFFICIENT SUPPORT SERVICES --INVESTIGATIVE, CLERICAL, RESEARCH--ARE AVAILABLE TO ENABLE DEFENSE ATTORNEYS TO DISCHARGE THEIR RESPONSIBILITIES IN A THOROUGH AND PROFESSIONAL MANNER.

8. THE MONTANA PUBLIC DEFENDER SHOULD PROVIDE ORIENTATION, TRAINING AND CONTINUING LEGAL EDUCATION TO DEFENDER AND PANEL ATTORNEYS.

V. CONCLUSIONS

A. Funding

The economics of indigent defense primarily concerns two inextricably related issues--the amount and source of money. Any improvement in defense services in Montana will require a corresponding increase in cost. Any increase in cost virtually demands a shift of the funding burden from the counties to the state.

The NCDM consultant team concludes that whatever the form chosen by Montana for providing improved indigent defense services, the cost will increase approximately 100 to 150 percent. This increase is necessary to provide Montana a system of sufficient quality to meet minimum national criminal justice standards.

The movement of fiscal responsibility from county to state may viplate the conventional wisdom regarding the funding and control of local services. But experience has shown that indigent defense services are often unpopular among the voting public, that constitutional rights are fragile assets in troubled times, and that local control generally produces an impoverished system. State funding could also avoid the potentially catastrophic consequences of a long and costly trial which might bankrupt a county standing on its own.

B. Independence

Is there a legitimate need for control at the county level?

Judges frequently cited the need to "move the docket" and to handle court business with dispatch. Judges are divided, however, over whether they should have some measure of control over the attorney dellvering the service. Some see an inherent coercion in their involvement with public

defenders contracts and appointments. Others discount such coercion as de minimus and deny any abuse of control. County commissioners seek control of the attorney only as it affects ultimate costs.

The consulting team finds no legitimate need for control at the local level. The independence and integrity of defense counsel must not be compromised for the sake of speed or economy.

C. Support Services

There is no equal justice when clients "handicapped" by indigency must be represented by counsel handicapped by inadequate investigative assistance, insufficient clerical support and negligible research resources. NCDM concludes that Montana must recognize the value--and underwrite the cost--of these critical support services.

D. Early Representation

Effective representation requires early representation. NCDM concludes that, consistent with the letter of court decisions and the spirit of equal justice, Montana must provide representation to eligible persons at any stage of the proceedings, including lineups, custodial and noncustodial interrogations, and before, during and after arrest.

E. Availability of Competent, Experienced Attorneys

Too often, counsel for the indigent in Montana has little knowledge of the criminal law, little interest in a criminal case and little sensitivity to the needs of the accused. NCDM concludes that orientation, training and continuing legal education must be made available to defenders and panel attorneys.

F. Caseload and Systems Cost Reporting

NCDM concludes that the absence of a thorough and uniform caseload and cost-reporting system is an impediment to the cost-effective delivery of quality indigent defense services. This situation must be remedied.

The best way to report caseload is to derive the figure that most accurately reflects the time spent in actively processing a case. This might be referred to as Time Consuming Caseload. One method of determining this might be to add the cases pending at the beginning of a reporting period (e.g., the beginning of the calendar year) to the cases filed during that reporting period, and then to subtract the cases pending at the close of the reporting period (e.g., the close of the calendar year). An alternative method is merely to report the total caseload, beginning at the start of the reporting period and ending at the close of the reporting period, contained in the files of the clerk of court. The latter method was used in this report.

Displayed in Table 1 below[14] are the data relating to the total juvenile and mental health caseload during the period 1973-1975, based on case documentation in the clerk of court office.

TABLE 1: YELLOWSTONE COUNTY. TOTAL JUVENILE AND MENTAL HEALTH CASELOAD, 1973-1975

	1973	1974	1975
Juvenile	150	163	185
Mental Health	74	62	67

In analyzing court-appointed or defender systems, the next step in establishing an index of the productivity of a public service legal defense

[14]The juvenile and mental health data reported by the Yellowstone County defenders is used only for purposes of example.

office is to determine the indigent caseload (non-fee-paying criminal defendant cases). This entails discovering both the number of cases handled by appointed counsel or defenders and the percentage of the total caseload reported. It should be emphasized that indigent caseload is the prime index of court-appointed or defender productivity. Table 2 below displays the indigent juvenile and mental health caseload data for Yellowstone County.

TABLE 2: YELLOWSTONE COUNTY. INDIGENT JUVENILE AND MENTAL HEALTH CASELOAD, 1975

	Total Caseload	Indigency Rate	Indigent Caseload
Juvenile	185	93%	173
Mental Health	67	99%	67

The objective of reporting case data is the identification to the revenue source of the dollar costs of the delivery of indigent legal defense services. This is accomplished either by adding the total court-appointed fees or, when operating on a contractual basis, by dividing the total salaries of the defenders by the indigent caseload previously derived. This should be presented in a format that will distinguish the major types of cases in which court-appointed or defender attorneys represent indigent defendants (e.g., adult felonies, adult misdemeanors, juvenile cases and mental health cases). Displayed below are the costs per case for the Yellowstone County jurisdiction.

TABLE 3: YELLOWSTONE COUNTY. CASE COSTS, 1975

	Indigent Caseload	Total Costs	Cost per case
Juvenile	173	$14,400	$83.24
Mental Health	67	9,600	$143.23
TOTAL		$24,000	$226.47

The jurisdictions visited by NCDM share a serious deficiency in estimating caseload and systems costs in the categories of adult felonies and misdemeanors; these data were routinely lumped together, thereby precluding their use in formulating management conclusions. In one instance, the confusion was compounded by the inclusion of civil case data together with criminal case data.

EXHIBIT 6
DATE 1.18.05
SB 146

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

Expert Report

An Assessment of Indigent Defense Services In Montana

SUBMITTED IN THE CASE

White v. Martz
CDV-2002-133

August 4, 2004

BY

The National Legal Aid & Defender Association
1140 Connecticut Avenue, NW, Suite 900
Washington, DC 20036

SENATE JUDICIARY
Exhibit No. 6
Date 1-18-05
Bill No. SB 146

Executive Summary

After conducting intensive site visits and interviews and reviewing the deposition and document discovery from the litigation in *White v. Martz*, the National Legal Aid & Defender Association (NLADA) has concluded that the provision of indigent defense services in Montana is unconstitutional in at least the following respects:

- Montana has failed to adequately fund the provision of indigent defense services. It has not assumed responsibility for the funding of indigent defense services in the misdemeanor courts and is not meeting its responsibility to fund such services in the district courts. The State's own budget projections indicate a total shortfall of between $4.2 and $4.6 million for the 2004-2005 fiscal period. This shortfall is from a budgeted number that does not come close to covering the costs of a constitutionally adequate indigent defense system. *See infra*, Section II.A.1; ABA *Ten Principles*, Number 2.

- Montana's failure to adequately fund indigent defense services has resulted in woefully inadequate resources for indigent defense, particularly as compared to those available to the prosecution. Public defenders in many counties must pay for their own office overhead, computers, software, telephones, photocopying, secretarial and paralegal assistance — items they cannot afford they go without. The State's public defender offices are also under-resourced. Nine attorneys in the Missoula County Public Defender Office, for example, must all share one investigator, one paralegal and three secretaries. The County Attorney's Office, in contrast, has the resources of the police and sheriff's department, three paralegals and seven secretaries. *See infra*, Section II.A.2; ABA *Ten Principles*, Number 8.

- Indigent defense services in Montana are not sufficiently independent and free from undue political interference. The judiciary largely controls indigent defense in many counties by appointing counsel, approving attorney compensation and reviewing the use of experts and investigators. Judges are free to (and often do) appoint counsel as they see fit rather than pursuant to objective guidelines, deny public defenders additional compensation for complex cases, and subject the use of experts and investigators to limits not applicable to prosecutors. Although it is relatively free from such judicial control, the Missoula Public Defender Office is also insufficiently independent — the County Attorney in that County, for example, often reviews the Office's budget. *See infra*, Section II.B; ABA *Ten Principles*, Number 1.

- Montana has failed to ensure that only qualified counsel represent indigent defendants and that public defenders receive the training necessary to perform competently. Many attorneys are assigned to cases pursuant to strict rotational systems with no regard for their level of experience. Attorneys are often forced to learn on the job, or not at all, as the State does not provide any orientation program for newly hired public defenders, any systematic and comprehensive training, or any technical assistance. County attorneys, in contrast, have access to

an office created by the State specifically to provide them with training and technical assistance. *See infra*, Section II.C; ABA *Ten Principles*, Numbers 6 and 9.

- There is no uniform system for determining eligibility for indigent defense and appointing public defenders in a timely manner in Montana. Screening for indigency varies from county to county but is done on an ad hoc basis in all counties, resulting in abuses of the system. Delays in appointment and initiation of client contact are also rampant. Defenders in Missoula County often do not see their clients for the first time until several weeks after appointment. *See infra*, Section II.D; ABA *Ten Principles*, Number 3.

- Public defenders in Montana do not have adequate time to meet with their clients and often fail to ensure that the meetings that do occur are confidential. There are no uniform policies or procedures for establishing and maintaining a working client relationship and many public defenders do not have regular and periodic substantive meetings with their clients. Letters from clients indicating that weeks, if not months, had passed since they had last heard from their attorneys are not uncommon, particularly in Missoula County. *See infra*, Section II.E; ABA *Ten Principles*, Number 4.

- There are no policies or procedures in Montana limiting the number or type of indigent defense cases to which public defenders may be assigned or any policies or procedures for collecting caseload data. Although the NLADA was unable to secure reliable caseload data, deposition testimony by public defenders indicates that are uniformly overworked. *See infra*, Section II.F; ABA *Ten Principles*, Number 5.

- Public defenders in Montana are not supervised in any meaningful way or monitored for compliance with any performance standards. There are no standards governing a defender's obligations to his or her client, conflicts of interest, the use of investigators and experts, the right to a speedy trial, plea bargaining, or the requesting of continuances. Although judges are involved in the appointment of indigent defense counsel and review attorney compensation, they do not provide any direct supervision because doing so would violate the Canons of Judicial Ethics. *See infra*, Section II.G; ABA *Ten Principles*, Number 10.

These failings have resulted in significant harm to indigent defense clients in Montana, who pay the price in the form of attorneys who take cases despite clear conflicts of interest, inappropriate waivers of probable cause hearings, lack of meaningful contact with their attorneys, failures to investigate or to use experts, infrequent motion practice and trials, pressure to take guilty pleas and to sign speedy trial waivers, and infrequent appeals. *See infra*, Section II.H.

Constitutional rights extend to all Americans, not merely those of sufficient means. Although state and local governments must balance other important demands on their resources, the Constitution does not allow for justice to be rationed to the poor due to insufficient funds. Montana has failed to deliver the constitutional right to effective assistance of counsel promised over forty years ago by the United States Supreme Court.

EXHIBIT 6
DATE 1-18-05
SB 146

Amendments to Senate Bill 146
Introduced Bill

Requested by the Department of Justice
and the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
January 18, 2005

1. Page 5, line 2.
Following: "of"
Strike: "seven"
Insert: "eleven"

2. Page 5, line 7.
Following: "in"
Insert: "the defense of"

3. Page 5, line 9.
Following: "represents"
Strike: "a Montana association for"
Following: "lawyers;"
Strike: "and"

4. Page 5, line 12.
Following: "house"
Strike: "."
Insert: ";"
Following: line 12
Insert: (d) one person who is a member of an organization that advocates on behalf of the indigent;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(2) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to [this Act] or must have demonstrated a strong commitment to quality representation of indigent defendants."
Renumber: subsequent subsections

-- End --

Re: commission

JUDICIARY
Exhibit 7
Date 1-18-05
Bill No SB 146

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 1-18-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	✓		
SEN. BRENT CROMLEY			✓
SEN. AUBYN CURTISS	✓		
SEN. JON ELLINGSON	✓		
SEN. JESSE LASLOVICH	✓		
SEN. JEFF MANGAN			✓
SEN. DAN McGEE	✓		
SEN. LYNDA MOSS	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. JIM SHOCKLEY			✓
VALENCIA LANE, LSD	✓		
MARI PREWETT, COMMITTEE SECRETARY	✓		

DATE 1-18-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 220, SB 208, SB 146

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Tim Burton	447-8403	City of Helena	208		X
Ed Tinsley	447-8304	Lewis & Clark County - MACO	208+ 146	X	
Greg Van Horssen	2-0230	State Farm	220		X
Larry Kubbae		PCIAA	220		X
Scott Crichton	3-8590	ACLU	146	X	
Jami McCall	670-3084	City of Billings	208 146		X
Ron Waterman	442-8560	Self	146	X	
Dan Mattucci	442-2776	MT Mental Health Assn	146	X	
Tim Burton	447-8403	City of Helena	146	X	
Penelope Strong	256-6861	Yellowstone City Public Defender	146	X	
Alec Hansen	442-8768	MLCT	146 208	X	X
Joe Mazurek	457-2000	City of Great Falls	208 146	X	X
Anita Roessmann	449-2344	MAP	146	X	

w/ amend

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-18-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 220, SB 208, SB 146

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike McGrath	444-2026	DOJ	146	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON SB 146 -- JUDICIARY

Call to Order: By **SEN. MICHAEL WHEAT**, on January 25, 2005 at 11:04 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, (D)
Sen. Jesse Laslovich (D)
Sen. Lynda Moss (D)

Members Excused: Sen. Dan McGee (R), Chairman

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Subcommittee Discussion on SB 146

SEN. MICHAEL WHEAT, SD 32, asked that stakeholders begin discussions by outlining those areas of SB 146 that needed to be changed, clarified, or amended. The substance of the proposed amendments would be discussed at a later meeting.

{Tape: 1; Side: A; Approx. Time Counter: 1.6 - 6.8}

Stakeholders Proposing Amendments:

Gordon Morris, Director, MT Association of Counties (MACo), stated that **Section 14-- Legislative findings -- cost sharing,** proposes that counties and municipalities share, with the state, the cost of funding the public defender system by way of an unidentified dollar amount to be adopted on an annual basis by the Montana Public Defender Act--15.6% to be provided by counties and 6.7% to be provided by cities and municipalities. MACo discussed with the Law and Justice Interim Committee the possibility of making a one-time, up-front payment through the entitlement program.

MACo also conducted a survey and found that in fiscal year 2004, some counties had no public defender costs. It believes that no county should escape sharing in the ultimate costs that are determined. He suggested that if the formula in Section 14 is used to determine how to allocate a cost to each county, the Committee could fix on a number and spread that number back to counties and municipalities using the population, taxable value, and crime rate allocations set forth in Section 14. This could determine a fair dollar amount for each county and municipality to pay. By doing this, counties and municipalities do not have to write a check each year. In 2001, the county entitlement gave the state $18.6 million to fund the District Court assumption and $9 million for welfare. MACo believes that the $1,040,000 could be given in the same fashion.

In conclusion, **Mr. Morris** said that he would be meeting with **Pam Bucy, Department of Justice (DOJ),** to prepare an amendment to SB 146.

{Tape: 1; Side: A; Approx. Time Counter: 6.9 - 19.9}

Jacqueline Lenmark, American Civil Liberties Union (ACLU), and speaking for Pam Bucy, DOJ, said that she prepared draft amendments for Committee review. The amendments have been discussed at length and in detail between the ACLU and the DOJ, prepared in a segregated format, and agreed upon.

Amendment #1 -- NEW SECTION (5) -- Public defender commission;

Recommendation that the commission be expanded by an additional four members--one each from an organization advocating for racial minorities, people with mental illness and developmental disabilities, and the indigent, and one employee of an organization that provides addictive behavior counseling.

EXHIBIT(jus100a01)

Amendment #2 -- NEW SECTION (13) -- Eligibility -- processing fee -- determination of indigence and partial indigence -- contributions toward costs -- rules.

Recommendation that the provisions related to "partial indigence" be eliminated from SB 146. It is felt that in light of the fiscal restraints, it is wiser to better understand the use of the public defender system and the cost associated with it before it is extended to a further population. The indigent population should be addressed first. The system could then be revisited to see whether there is room to expand it to those who are partially indigent.

EXHIBIT(jus100a02)

Following **NEW SECTION (8)**, insert:

Amendment #3 -- NEW SECTION (9) -- Office of appellate defender -- chief appellate defender.

The DOJ and ACLU felt it important that the position of chief appellate defender be clearly described and the duties of the chief appellate defender be enumerated. The amendment would set up an office that would be at the same level in the organization as the regional deputy defenders. However, it would handle only the appellate work in the public defender system. The rationale is that the appellate work requires a different set of skill and expertise that would be better handled through one office handling appeals rather than in the many regional offices that SB 146 contemplates.

EXHIBIT(jus100a03)

Amendment #4 -- Amending Section 53-30-110, MCA -- Expense of trial for offenses committed in prison.

Current statutes provide that if a person is incarcerated at the Montana State Prison (MSP) or around the state and if a trial is held involving that individual, the county in which the trial is held pays for the cost of the trial. Those costs are certified by the District Judge of the county and sent to the Department of Corrections. The Department pays for the trial out of money appropriated to it in the biennium. It is believed that those trials should be subsumed within the public defender system if the defendant is indigent and eligible for assigned counsel. This is a concept amendment.

EXHIBIT(jus100a04)

Amendment #5 -- Technical amendments.

These amendments provide references to the Supreme Court standards for capital cases and the type of data that is necessary to be collected to satisfy the stipulation settling the lawsuit. It also gives the Commission, Legislature, and the Governor the information they need, on an ongoing basis, to evaluate the system and continually work toward its improvement and implementation.

EXHIBIT(jus100a05)

{Tape: 1; Side: A; Approx. Time Counter: 19.9 - 20.4}

Betsy Brandborg, State Bar of Montana, spoke in general support of SB 146.

{Tape: 1; Side: A; Approx. Time Counter: 20.4 - 22.8}

Alec Hansen, MT League of Cities and Towns, said that in reviewing the fiscal spreadsheet prepared by the Legislative Fiscal Division (LFD), he sees no anomalies or figures that jump off the page. However, he would like to send the spreadsheet to members of the League and allow them to compare what they are currently spending with what they are likely to spend under SB 146. He added that he is not offering amendments at this time, but if there is something that shows up in the proposed distribution matrix that is obviously wrong or unfair, he felt it better to know ahead of time.

Mr. Hansen requested the consideration of an amendment in regard to the entitlement program. He said that the League does not want the state or anyone else to have access to the municipal bank accounts. The entitlement program was established by a bill passed by the 2001 Legislature, and cities are very jealously

guarding that money. It goes back to a bill considered in a previous session where, if a city or county had an environmental fine or other alleged liability or if they owed money to the state, the state could automatically dip into that bank account. He did not believe that to be good practice. If cities and towns are going to pay for the public defender system, send them a bill and they will remit payment just like everything else is paid for in Montana.

{Tape: 1; Side: A; Approx. Time Counter: 22.8 - 24.1}

Jani McCall, Cities of Billings and Missoula, agreed with **Mr. Hansen** in that they preferred to not see the entitlement used for the public defender system. Billings and Missoula also have concerns about the fiscal note, and they would like the opportunity to review the numbers. She also requested that the Committee consider exempting cities from SB 146.

SEN. WHEAT asked if **Ms. McCall** was suggesting the exemption of cities so that they pay nothing. **Ms. McCall** said, yes, take misdemeanors offenses out of the bill.

{Tape: 1; Side: A; Approx. Time Counter: 24.1 - 26.2}

Diana Koch, Chief Legal Counsel, Department of Corrections, said that currently, the Department is paying for public defenders who are appointed pursuant to 53-30-110, MCA, which includes anyone who is accused of committing a crime while in prison or anyone accused of an escape. The Department supports the amendment by **Ms. Lenmark** because it encapsulates the intent of SB 146 to have the public defender system be the overseer of those public defenders who are appointed for indigent prisoners.

Ms. Koch added that the amendment also states that the bills would be certified and sent to the state public defender system for payment if a public defender is appointed; and if not, if a regular attorney is appointed and paid for by the defendant, the bills would be submitted to the Department of Corrections. She said if the defendant is paying for their own attorney, she did not think those bills needed to be submitted to the Department. The section does not contemplate the Department picking up that particular expense.

{Tape: 1; Side: B; Approx. Time Counter: 6.5 - 8.8}

Linda Stahl, Missoula County, said that aside from picking up the Justice of the Peace public defender costs and the Municipal Court costs within SB 146, the remainder is a part and parcel of the District Court expenses that were transferred at the time HB

124 and SB 176 occurred. Missoula County gave the state all the money it had for that service. She preferred that Justice of the Peace Courts and Municipal Courts be excluded altogether. She said that Missoula County pays approximately $143,000 each year for the Municipal Court public defender and would gladly give that up to the state. However, it does not have room to go deeper into its budget to pay for what it would fairly argue are state costs.

{Tape: 1; Side: B; Approx. Time Counter: 8.8 - 10.1}

Dave Nielson, City Attorney, Helena, also requested additional time to study the fiscal note to ensure that the assumptions are accurate.

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. DAN MCGEE, Chairman

MARI PREWETT, Secretary

LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT(jus100aad0.PDF)

Subcommittee - SB-146

Exhibit No. 1
Date 1-25-05
Bill No. SB146

Amendments to Senate Bill 146
Introduced Bill

Requested by the Department of Justice
and the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
January 18, 2005

1. Page 5, line 2.
Following: "of"
Strike: "seven"
Insert: "eleven"

2. Page 5, line 7.
Following: "in"
Insert: "the defense of"

3. Page 5, line 9.
Following: "represents"
Strike: "a Montana association for"
Following: "lawyers;"
Strike: "and"

4. Page 5, line 12.
Following: "house"
Strike: "."
Insert: ";"
Following: line 12
Insert: "(d) one person who is a member of an organization that advocates on behalf of the indigent;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(2) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to [this Act] or must have demonstrated a strong commitment to quality representation of indigent defendants."
Renumber: subsequent subsections

-- End --

Re: commission

Subcomittee

Exhibit No. 2
Date 1-25-05
SB 146

Amendments to Senate Bill 146
Introduced Bill

Requested by the Department of Justice
and the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
January 18, 2005

1. Page 12, line 15 through line 19.
Strike: subsections (a) and (b) in their entirety
Renumber: subsequent subsections

2. Page 12, line 29 through line 30.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

3. Page 13, line 9 through line 25.
Strike: subsections (5) and (6) in their entirety
Renumber: subsequent subsections

4. Page 13, line 26.
Following: "indigence"
Strike: "or partial indigence"

5. Page 14, line 6.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

6. Page 14, line 7.
Following: "may"
Strike: "provided"
Insert: "provide"

7. Page 14, line 9 through line 14.
Following: "processes" on line 9
Strike: remainder of line 9 through "feasible" on line 14

8. Page 14, line 17 through line 18.
Strike: subsection (10) in its entirety

-- End --

Re: partial indigence

Subcommittee

3
1-25-05
SB 146

Amendments to Senate Bill 146
Introduced Bill

Requested by the Department of Justice
and the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
January 18, 2005

1. Page 9, line 18.
Following: line 18
Insert: "NEW SECTION. **Section 9. Office of Appellate Defender -- Chief Appellate Defender.** (1) There is within the office an office of appellate defender.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer, or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of [Section 8(7)] and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the chief public defender;

(e) contract for services as provided in [Section 11] and as authorized by the chief public defender according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender."
Renumber subsequent sections.

-- End --

Re: appellate defender

Subcommittee

4
1-25-05
SB 146

Amendments to Senate Bill 146
Introduced Bill

Requested by the Department of Justice
and the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
January 23, 2005

1. Page 14, line 28 through page 16, line 8.
Strike: subsections (3) through (6) in their entirety
Insert: *[still need language]*

x. Page 16, line 10.
Following: "treasurer"
Strike: "may"
Insert: "shall"

x. Page 63.
Following: line 24
Insert: **"Section 61.** Section 53-30-110, MCA, is amended to read:

"53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and~~ or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner~~, properly~~. The statement must be certified by a district judge of the county.

(2) The statement must be sent for approval to:

(a) the office of state public defender, provided for in [section 7], if counsel was assigned for the person pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]; or

(b) the department of corrections ~~for its approval~~ if counsel was not assigned for the person pursuant to the Montana Public Defender Act.

(3) ~~After such approval, the~~ If the statement is approved, the office of state public defender or the department shall pay the costs ~~out of the money appropriated for the support of the state prison~~ to the county treasurer of the county where the trial was held.

(4) The department shall pay the costs, if any, out of the money appropriated for the support of the state prison."

Renumber: subsequent section

-- End --

Judiciary
EXHIBIT NO. 5
DATE 1-25-05
BILL NO. Subcommittee SB#146

Amendments to Senate Bill 146
Introduced Bill

Requested by the Department of Justice
and the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
January 23, 2005

1. Page 2, line 29.
Following: "that"
Insert: "adequate"

2. Page 3.
Following: line 25
Insert: "(iv) for an applicant for sentence review pursuant to Title 46, chapter 19, part 9;"
Renumber: subsequent subsections

3. Page 6.
Following: line 23
Insert: "(e) practice standards;"
Renumber: subsequent subsections

4. Page 6, line 28.
Following: "to"
Strike: "hire"
Insert: "create"
Following: "staff"
Insert: "positions"

5. Page 7, line 3.
Following: "policies"
Insert: "and procedures"

6. Page 7, line 9.
Following: "must"
Insert: "cover the preceding biennium and"
Following: "include"
Strike: "detailed expenditure, caseload, and workload data by court and case type and"
Insert: ":
(1) all policies or procedures in effect for the operation and administration of the statewide public defender system;
(2) all standards established or being considered by the commission or the chief public defender;
(3) the number of deputy public defenders and the region supervised by each;

Re: technical - 1

(4) the number of public defenders employed or contracted in the system, identified by region;

(5) the number of attorney and nonattorney staff supervised by each deputy public defender;

(6) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(7) the total number of persons represented by the office, identified by region, court, and case type;

(8) the annual caseload and workload of each public defender, identified by region, court, and case type;

(9) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(10) the continuing education on criminal defense or criminal procedure attended by each public defender employed or contracted in the system;

(11) detailed expenditure data by court and case type; and

(12)"

7. Page 7, line 22.
Following: "(3)"
Strike: "Subject to the commission's approval, the"
Insert: "The"

8. Page 9, line 3.
Following: "experience"
Strike: "and"
Insert: ","
Following: "training"
Insert: ", and manageable caseloads"

9. Page 9.
Following: line 5
Insert: "(8) establish policies and procedures for assigning capital cases that are consistent with standards for counsel for indigent persons in capital cases issued by the Montana supreme court;"
Renumber: subsequent subsections

10. Page 9, line 6.
Following: "for"
Insert: "attorneys and"

11. Page 9, line 21.
Following: "coordinator"
Strike: "from a list of three names submitted by the president of the state bar of Montana"

12. Page 11.
Following: line 12
Insert: "(c) attorney qualifications necessary to provide effective assistance of counsel that meets the standards for counsel for indigent persons in capital cases issued by the Montana supreme court;"
Renumber: subsequent subsections

-- End --

FISCAL NOTE

Bill #: SB0146 **Title:** Statewide public defender system

Primary Sponsor: Mcgee, D **Status:** As Introduced

Sponsor signature Date David Ewer, Budget Director 1/14/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$916,350	$2,535,987
State Special Revenue	$0	$3,063,207
Proprietary	$55,000	$25,000
Revenue:		
General Fund	$0	$0
State Special Revenue	$0	$3,063,207
Proprietary	$55,000	$25,000
Net Impact on General Fund Balance:	($916,350)	($2,535,987)

☒	Significant Local Gov. Impact	☐	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☒	Dedicated Revenue Form Attached	☒	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Office of the Chief Public Defender

New Office Costs

1. The function is administratively attached to the Department of Administration, but will be an independent office and held out as a new state agency.
2. Beginning in FY 2007, the state general fund will pay 77.7 percent of the office's costs. Local governments pay the remaining 22.3 percent (section 14) via deposits in the state special revenue fund created in section 12.
3. In FY 2007, local governments will be required to pay for 22.3 percent of the office's budget (15.6 percent by counties and 6.7 percent by cities). Based on the budget that follows, these payments would total $3,063,207 in FY 2007.
4. The Public Defender Commission will be appointed by June 1, 2005.
5. The commission will appoint the Chief Public Defender by September 1, 2005. The salary and benefits for the position are $71,298 in FY 2006 and $95,064 in FY 2007.

SB 146

Other County Public Defender Costs transferred to State of Montana

15. County funded office costs are estimated to equal $674,157 in FY 2007.
16. Network connection costs and on-going connection costs are estimated at $86,468 in FY 2007.
17. Furniture replacements are expected to total $25,000 in FY 2007
18. Rent in county offices is assumed to be $206,000 in FY 2007.
19. Justice court costs assumed by the state are estimated to total $1,040,000 in FY 2007 (MaCO survey)
20. City and municipal court costs transferred to the state are estimated to be $737,546 in FY 2007.

Department of Administration

21. The Department of Administration will provide human resource services to the office. This fiscal note assumes classification costs to cover new and existing employees to the state system will total $30,000 in FY 2006. Ongoing payroll processing costs are estimated at $25,000 each year and require an additional 0.25 FTE per year with offsetting proprietary revenues.

Costs associated with representation for indigent parents in child abuse and neglect cases - new

22. These new costs would be incurred in the newly created Office of the Public Defender.
23. The Judiciary used case filing data for cases filed pursuant to 41-3-422, MCA, from the first 6 months of FY 2004 and doubled the filings to estimate a full fiscal year.
24. Currently the 1st, 2nd, 4th, 13th, 14th, 18th, 21st and 22nd Judicial Districts as well as some counties in the 7th and 12th Judicial Districts appoint counsel immediately. The cost in FY 2004 for public defender representation of the parents in these cases was $533,213. There were 241 filings in the first 6 months of FY 2004 in these districts. The average cost per case was $1,106. $533,213/(241 x 2).
25. The cost in FY 2004 for public defender representation of the parents in Judicial Districts, which don't appoint counsel immediately, was $279,360. There were 221 cases filed in the first 6 months of FY 2004 in the Judicial Districts where counsel was appointed at either the adjudication or dispositional hearing stage of the process. The average cost per case was $632. $279,360/(221x2).
26. The total increased cost is estimated at $209,508 per year. ($1,106-$632) x (221x2).
27. Assumptions are base on work done by the Legislative Fiscal Division and the Legislative Services Division for the Law and Justice Interim Committee in preparation for submission of this bill. The Office of the Court Administrator and the Department of Administration compiled additional information.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Public Defender Office - New		
FTE	5.50	84.25
Expenditures:		
Personal Services	294,140	2,874,486
Operating Expenses – Indigent parent	209,508	209,508
Operating Expenses	412,702	10,652,000
TOTAL	$916,350	$13,736,354
Funding of Expenditures:		
General Fund (01)	916,350	10,673,147
State Special Revenue (02)	0	3,063,207
TOTAL	$916,350	$13,736,354

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Beginning in FY 2007, local governments will be relieved from approximately $2,756,171 in indigent defense services costs due to the proposal. Non-reimbursed district court services incurred by counties are estimated at $978,625, justice court costs are $1,040,000, and municipal courts are $737,546.
2. In FY 2007, local governments will be required to pay for 22.3 percent of the Office's budget (15.6 percent by counties and 6.7 percent by cities). Based on the budget above, these payments would total $3,063,207 in FY 2007.
3. The possible net impact to all local governments will be increased "expenditures" of $307,036 in FY 2007 ($3,063,207-$2,756,171). There will be winners and losers among local government units based on current expenditure patterns and allocations of city and county shares under the new funding algorithm.
4. The local entities will be required to pay, into a state special revenue account, the accrued sick leave and vacation leave totals for each assumed employee. It is impossible to determine the impact of this but anything paid in will reduce the counties balance sheet liabilities.

DATE 1-25-05

SENATE COMMITTEE ON Judiciary (Subcommittee)

BILLS BEING HEARD TODAY: S.B. 146

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Betsy Brandborg	442-7660	State Bar of Montana	146	✓	
Diana Koch	444-9593	Corrections	146	✓	
Shane Mahalley	444-3905	Corrections	146	✓	
David L. Nielsen	457-8595	City of Helena	146	X	
Jani McCall	670-3084	City of Bozeman	146	X	
Penny Strong	256-6861	Yellowstone City PDO	146	—	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 14, 2005 at 8:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	SB 387, 2/9/2005; SB 385, 2/9/2005; SB 402, 2/9/2005
Executive Action:	SB 146; SB 43; SB 319; SB 344; SB 374; SB 375

EXECUTIVE ACTION ON SB 146

SEN. DANIEL MCGEE, SD 29, said that the Subcommittee on SB 146 individually processed a series of nine amendments to SB 146. Further Subcommittee discussions uncovered possible problems with the numbers contained in the bill. SB 146 was again revised resulting in the SB 146 gray bill--Establishing the Montana Public Defender Act. **SEN. MCGEE** provided a brief synopsis of the gray bill and its associated amendments.

EXHIBIT(jus36a01) these exhibits are not to be found
EXHIBIT(jus36a02)

{Tape: 1; Side: A; Approx. Time Counter: 18.6 - 22.4}

Motion: SEN. MCGEE moved that SB 146 DO PASS.

Motion: SEN. MCGEE moved the approval of amendment #SB014609.avl.

Discussion:

SEN. JEFF MANGAN, SD 12, asked if a revised fiscal note was available and, if so, what impact would the amendments have on SB 146. **Brent Doig, Office of Budget and Program Planning (OBPP),** said that the estimated total cost would not change much from the original fiscal note. What has been tweaked is the estimated amount that the state was going to assume from local entities. **SEN. MANGAN** asked if local governments were picking up more or less than what was indicated in the original fiscal note. Although **Mr. Doig** was unsure, he felt that once the adjustments were completed, based upon the audits, it would be very similar to the estimations in the original fiscal note. **SEN. MCGEE** added that the Subcommittee worked with the original figure of $1,000,040. The various amounts that counties paid changed, but the dollar total remained the same. **SEN. MANGAN** asked if local governments approved of the final amounts that went into SB 146. **SEN. MCGEE** said, yes.

{Tape: 1; Side: A; Approx. Time Counter: 22.4 - 26.3}

SEN. AUBYN CURTISS, SD 1, asked if the intent of SB 146 was to conduct ongoing audits of the six most populous counties and cyclical audits of the remaining counties. **SEN. MCGEE** said that the Department of Revenue and OBPP decided that the amount of money affected would be germane only to the six most populous counties. The remaining jurisdictions were within a dollar figure that did not warrant an audit at this time.

SEN. MCGEE added that a further amendment related to "fitness to proceed" still remains. In a criminal case, either the prosecutor or the defendant's attorney can request an evaluation for "fitness to proceed". This is important because the cost for a doctor to assess the fitness of a defendant is small, but the cost to house the defendant during the assessment, at Warm Springs for example, may be quite high.

{Tape: 1; Side: A; Approx. Time Counter: 26.3 - 29.9}

SEN. JIM SHOCKLEY, SD 45, felt that the state would be paying for the "fitness to proceed" assessment regardless of who requests it because the county attorney and defense counsel will work out a deal. He asked if the money figures were the same figures provided by the Department of Justice during the 2003 interim committee discussions. If so, the figures were incorrect and should not be relied upon. He said that 97% of the people in Ravalli County are represented by public defenders. **SEN. MCGEE** said that the closest true dollar figure that the Subcommittee could come to is included in SB 146, with the exception of the six populous counties that will be audited. **SEN. SHOCKLEY** said, the reason actual expenditure figures were used was to ensure that the state would not be locked into a set percentage cost and because the interim committee wanted to get a handle on what those costs might be.

{Tape: 1; Side: A; Approx. Time Counter: 29.9 - 30.0}

Vote: SEN. MCGEE'S motion that amendment #SB014609.avl be approved passed on a 12 to 0 voice vote. SEN. BRENT CROMLEY, SD 25, voted aye by proxy.

Motion: SEN. MCGEE moved that SB 146 DO PASS AS AMENDED.

{Tape: 1; Side: B; Approx. Time Counter: 2.3 - 3.1}

Discussion: SEN. MANGAN questioned whether the amendment regarding the "fitness to proceed" assessments would be discussed during Second Reading. **SEN. MCGEE** said that the amendment was not available but could be discussed during Second Reading of the Senate or when it reaches the Finance and Claims Committee.

Vote: SEN. MCGEE's motion that SB 146 DO PASS AS AMENDED carried unanimously by voice vote. SEN. CROMLEY voted aye by proxy.

EXECUTIVE ACTION ON SB 43

{Tape: 1; Side: B; Approx. Time Counter: 3.1 - 6.2}

Exhibits for SB 146, Senate Judiciary Committee hearing 2-14-2005 are not available at the Law Library.

The originals are housed at the Montana Historical Society, 406-444-2681.

FISCAL NOTE

Bill #: SB0146 **Title:** Statewide public defender system

Primary Sponsor: McGee, D **Status:** As Amended in Senate Committee

Sponsor signature Date David Ewer, Budget Director 2/21/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$916,350	$3,821,648
State Special Revenue	$0	$0
Proprietary	$55,000	$25,000
Revenue:		
General Fund	$0	$0
State Special Revenue	$0	$0
Proprietary	$55,000	$25,000
Net Impact on General Fund Balance:	($916,350)	($3,821,648)

☒	Significant Local Gov. Impact	☐	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☒	Dedicated Revenue Form Attached	☒	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Office of the Chief Public Defender - New Office Costs

1. The function is administratively attached to the Department of Administration, but will be an independent office and held out as a new state agency.
2. There will be a change in the local government entitlement share payment law to compensate the state for local government's share of the costs of the statewide public defender system.
3. A legislative audit will be done to determine the funding responsibilities for certain counties so their share can be based on actual costs.
4. The Public Defender Commission will be appointed by June 1, 2005.
5. The commission will appoint the Chief Public Defender by September 1, 2005. The salary and benefits for the position are $71,298 in FY 2006 and $95,064 in FY 2007.
6. The chief fills all positions by the end of FY 2006, with key positions needed to administer the office hired throughout FY 2006 per below:
   a. Administrative director – annual salary and benefits - $65,547 – 50 percent in FY 2006

SB 146 #2

b. Assistant Public Defenders – 2.00 FTE with total salary and benefits of $131,094 – 25 percent in FY 2006
c. Financial Manager - annual salary and benefits of $50,571 – 50 percent in FY 2006
d. Contract managers – 2.00 FTE with total salary and benefits of $101,502 – 25 percent in FY 2006
e. Administrative Support – 2.00 FTE with total salary and benefits of $68,571
f. Accountant – annual salary and benefits - $50,751 – 25 percent in FY 2006
g. Accounting Technicians – 3.00 FTE with total salary and benefits of $119,721 – FY 2007 only
h. Indigence determination specialists – 5.00 FTE with total salary and benefits of $199,935 – FY 2007 only
i. Information tech analysts – 2.00 FTE with total salary and benefits of $101,502 – 25 percent FY 2006

7. The existing appellate defender operating budget is increased 4 fold to handle an increased caseload with current FTE. This legislation creates an office of appellate defender and a chief appellate defender hired by the chief public defender. The operating budget is increased by $192,290 in FY 2006 and $769,160 in FY 2007.
8. Operating Costs are assumed for partial office operation in FY 2006 and fully fund the office in FY 2007:
   a. Rent - $25,956 in FY 2006 and $98,880 in FY 2007
   b. Data network charges - $4,709 in FY 2006 and $17,947 in FY 2007.
   c. Furniture -- $30,900 in FY 2006.
   d. Personal computers - $27,831 in FY 2006
   e. Processing services -- $16,055 in FY 2006 and $61,158 in FY 2007.
   f. Job classifications for new and transferred staff - $30,000 in FY 2006.
   g. Travel -- $1,442 in FY 2006 and $2,884 in FY 2007.
   h. Fixed costs - $13,519 in FY 2006 and $51,500 in FY 2007.
   i. Training -- $102,528 in FY 2007.
   j. Commission meetings and travel equal $25,000 in FY 2006 and $15,000 in FY 2007.
   k. DoA support costs – payroll $25,000 each year.
   l. Information technology – FY 2006 includes $20,000 for a needs assessment. FY 2007 includes $428,000 for the purchase of a case management system (NM system) and $64,200 for maintenance.

Current costs in District Court Assumption Transferred to Office:

9. Appointed attorneys – estimated cost of $5,122,378 in FY 2007.
10. County Public Defender staff – In FY 2007, 40.00 FTE attorneys and 22.75 FTE support staff will be transferred from the county offices to the state. Estimated personal services cost amount to $1,846,863 in FY 2007.
11. Contracted attorney costs are estimated to total $619,056 in FY 2007.
12. Private investigator costs are assume to be $216,978 in FY 2007
13. Witness fees that will transfer to the Office of the Chief Public Defender are assumed to be $153,443.
14. Legal fees and other court costs that will transfer to the Office of the Chief Public Defender are assumed to be $134,717.
15. The Judicial Branch will transfer 1.50 FTE to the Office of the Chief Public Defender effective July 1, 2007 per below:
    a. One Accounting Technician at annual salary and benefits of $28,595
    b. One half-time Administrative Assistant at annual salary and benefits of $15,130.

Other County Public Defender Costs transferred to State of Montana

16. Justice court costs assumed by the state are estimated to total $1,040,000 in FY 2007 (MaCO survey)
17. City and municipal court costs transferred to the state are estimated to be $737,546 in FY 2007.

18. The cost estimates in assumptions 15 and 16 will be reduced from the entitlement share allocation.
19. A legislative audit will be conducted to determine actual expenditures for FY 2003 and FY 2004. The audit will be used to determine an annual average cost that will be the reduction in entitlement share for Cascade, Flathead, Gallatin, Lewis and Clark, Missoula and Yellowstone counties. **This allocation will reduce the net impact to the general fund but an amount cannot be estimated at this time.**

Department of Administration

20. The Department of Administration will provide human resource services to the office. This fiscal note assumes classification costs to cover new and existing employees to the state system will total $30,000 in FY 2006. Ongoing payroll processing costs are estimated at $25,000 each year and require an additional 0.25 FTE per year with offsetting proprietary revenues.

Costs associated with representation for indigent parents in child abuse and neglect cases - new

21. These new costs would be incurred in the newly created Office of the Public Defender.
22. The Judiciary used case filing data for cases filed pursuant to 41-3-422, MCA, from the first 6 months of FY 2004 and doubled the filings to estimate a full fiscal year.
23. Currently the 1st, 2nd, 4th, 13th, 14th, 18th, 21st and 22nd Judicial Districts as well as some counties in the 7th and 12th Judicial Districts appoint counsel immediately. The cost in FY 2004 for public defender representation of the parents in these cases was $533,213. There were 241 filings in the first 6 months of FY 2004 in these districts. The average cost per case was $1,106. $533,213/(241 x 2).
24. The cost in FY 2004 for public defender representation of the parents in Judicial Districts, which don't appoint counsel immediately, was $279,360. There were 221 cases filed in the first 6 months of FY 2004 in the Judicial Districts where counsel was appointed at either the adjudication or dispositional hearing stage of the process. The average cost per case was $632. $279,360/(221x2).
25. The total increased cost is estimated at $209,508 per year. ($1,106-$632) x (221x2).
26. Assumptions are base on work done by the Legislative Fiscal Division and the Legislative Services Division for the Law and Justice Interim Committee in preparation for submission of this bill. The Office of the Court Administrator and the Department of Administration compiled additional information.

Department of Corrections

27. The proposed statewide public defender system would absorb the costs DOC currently spends on inmate public defender services for the prosecution of crimes committed in prison.
28. These costs also include expert witnesses, psychological exams and transcripts. In FY 2004, these expenses totaled $50,141.67.
29. It is assumed that the base budget in the DoC will transfer to the Public Defender Office in FY 2007 to offset costs associated with the new responsibility.

Legislative Audit

30. In accordance with section 2-7-504, MCA, the named counties are conforming to the rules of accounting for the receipt and disbursement of all money belonging to the local government.
31. Fiscal year 2003 and 2004 public defender expenditure records of each county named are readily available for both district and justice court proceedings.
32. The audit hours for each of fiscal year 2003 and 2004 financial audits required by the state single audit act for the six named counties averaged 720 hours per audit.
33. The average billing rate for the fiscal year 2003 and 2004 financial audit services required by the state single audit act for the named counties was $60 per hour.
34. To the extent that these expenditures were included in the annual audits of the counties, the audit requirement under section 74(2) will rely on the audit results of the annual audits under the state single audit act.
35. These audits are special purpose claims reviews of the expenditures for public defender services in justice and district courts that were not reimbursed by the Office of Court Administrator.

36. The Legislative Auditor will contract for the audit services.
37. The Legislative Auditor will provide administrative support for contract arrangements, not to exceed 15 hours per county at a rate of $54 per hour, paid by the contractor.
38. Contract payments will be made directly to the contractor by the county for actual services rendered.
39. Each county will require 75 hours of audit services per fiscal year reviewed, at a rate of $60 per hour.
40. The Legislative Auditor will spend 40 hours compiling the results of the audit work to meet the reporting requirement.
41. The total estimated cost of the audits is $49,500 to be paid by those counties audited.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Public Defender Office - New		
FTE	5.50	84.25
Expenditures:		
Personal Services	294,140	2,874,486
Operating Expenses – Indigent parent	209,508	209,508
Operating Expenses – Inmate Public Defender Services	0	50,141
Operating Expenses	412,702	10,652,000
TOTAL	$916,350	$13,786,495
Funding of Expenditures:		
General Fund (01)	916,350	$13,786,495
Department of Administration		
FTE	0.25	0.25
Expenditures:		
Personal Services	25,000	25,000
Operating Expenses	30,000	0
TOTAL	$55,000	$25,000
Funding of Expenditures:		
General Fund (01)	0	0
Proprietary	55,000	25,000
TOTAL	$55,000	$25,000
Revenues:		
Proprietary (06)	$55,000	$25,000

Fiscal Note Request SB0146, As Amended in Senate Committee
(continued)

Judicial Branch
Supreme Court Operations (01)

FTE	0.00	(1.50)
Expenditures:		
Personal Services	$0	($43,725)
Funding of Expenditures:		
General Fund (01)	$0	($43,725)

Judicial Branch
District Court Operations (04)

Expenditures:		
Operating Expenses	$0	($8,093,435)
Funding of Expenditures:		
General Fund (01)	$0	($8,093,435)

Department of Corrections

Expenditures:		
Operating Expenses	$0	($50,141)
Funding of Expenditures:		
General Fund (01)	$0	($50,141)

Department of Administration
Entitlement Offset

Expenditures:		
Transfers (Entitlement Share Allocation)	$0	(1,777,546)
Transfers (Estimated Adjustment per Audit)	**$0**	**(unknown)**
TOTAL	$0	($1,777,546)
Funding of Expenditures:		
General Fund (01)	$0	($1,777,546)

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	($916,350)	($3,821,648)
State Special Revenue (02)	$0	$0
Proprietary (06)	$0	$0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. The local entities will be required to pay, into a state special revenue account, the accrued sick leave and vacation leave totals for each assumed employee. It is impossible to determine the impact of this but anything paid in will reduce the counties balance sheet liabilities.
2. There will be a legislative audit of six counties that will be paid for by these counties. The estimated cost of these audits is estimated to be $49,500 in FY 2006.
3. The currently identified costs associated with justice courts and city and municipal courts will be reduced from the local entity's entitlement share (justice court - $1,040,000 and city/municipal court - $737,546) and all costs assumed by the state of Montana.
4. The other costs associated with those counties that have a public defender office will have those costs identified in the proposed audit and those amounts removed from the entitlement shares. The responsibilities of those offices will also be assumed by the state of Montana.

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 8, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Don Ryan (D)
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 484, 3/2/2005; SB 491, 3/2/2005; SB 439, 3/2/2005; HB 493, 3/2/2005; SB 146, 3/2/2005
Executive Action: None.

at an airport or port authority. **SEN. NOONAN** clarified it has to be linked to those specific types of projects.

CHAIRMAN COONEY said this has been in law since 1997, and the Board of Examiners has never approved a bond sale. **REP. NOONAN** replied there has never been one.

SEN. SCHMIDT referred to the comment of **Mr. Camich** about a $60 million industry in Montana and she wondered if that is now or potentially. **Mr. Camich** responded research and development is going on right now in companies across the state.

SEN. GALLUS asked about the specific important changes in this language. **Mr. Camich** said last fall they engaged bond counsel, Mae Nan Ellingson, to review the bill to make it more user friendly for small companies.

SEN. BARKUS asked about Section 1(3). **Mr. Poole** said if an aerospace bonding project comes forward and wants the state to construct a facility, the state would do that providing the company can prove they are creating enough jobs and economic activity that the taxes generated would pay off the general obligation bonds at the time. The State would own the facility and would lease it to the company at a lower cost than market rate based upon taxes generated. **SEN. BARKUS** asked if that is how the original bill was drafted and **Mr. Poole** said that is correct. **SEN. BARKUS** asked if that was why there had not been any bonds issued. **Mr. Poole** said the difficulty has been creating enough new employment to be able to amortize GEO-bonds over time. The bill allows the project to use the multiplier effect on employment for new taxes.

Closing by Sponsor:

REP. NOONAN closed on the bill. He said this is about the future growth of these industries.

HEARING ON SB 146

{Tape: 3; Side: B; Approx. Time Counter: 9.6}

Opening Statement by Sponsor:

SEN. DAN MCGEE (R), SD 29, Billings, opened the hearing on **SB 146,** Statewide public defender system. The bill creates a Chief Public Defender's Office and the position of Chief Public Defender. It creates Deputy Public Defenders and establishes the

ability to form as many as eleven regions. It is creative in concept and provides a variety of solutions to public defense. It establishes standards and procedures for the Chief Public Defender and for all public defense. The fiscal part of the bill is a moving target. In FY 06 $900,000 will be expended and $3.8 million in FY 07. The original bill called for a seven-member Public Defender Commission which was amended to eleven. By July 1, 2005, the Commission will be established. By December 31, 2005, they will have hired a Chief Public Defender. By July 1, 2006, the standards, procedures, and the general format for the Chief Public Defender's office will be in place. Currently, there is $8 million to $10 million spent on public defense a year. The counties pay for those costs and are reimbursed by the District Court Council. The increased amount of spending is between $2.5 million and $3.5 million for the biennium. He complimented the cities and counties for their work on this. The ACLU is suing the State of Montana; the case is on hold pending action by the Legislature. This bill is needed because if the ACLU were to win in that case and suggest that there has been ineffective assistance of counsel because there have been no standards or standard procedures, everyone who has ever been in the state prison or is currently in the state prison could decide to sue the State of Montana. He said this is not a knee-jerk reaction to the ACLU suit. This is the right policy for the state. The total increase in state spending as a consequence of this bill will be around $3 million to $4 million. He noted there are amendments that need to be put on the bill.

EXHIBIT(fcs51a05)
EXHIBIT(fcs51a06)

Proponents' Testimony:

Ron Waterman, Participating Attorney, ACLU, complimented the work of **SEN. MCGEE** and the legislative subcommittee. In 1976, a Supreme Court decision extended counsel to all individuals charged with a felony. The State of Montana asked the National Association of Legal Defense Funds to evaluate the public defender system. The system was found woefully deficient and probably unconstitutional. The ACLU brought suit in 2002 because, between 1976, when that report was passed, and 2002, nothing had changed. In 2004, the same group came back to re-examine what the system was like and they found the system had deteriorated. The trial was scheduled for May 2004. The Attorney General came to the ACLU and asked that the Legislature be given an opportunity to resolve this problem before pressing forward to litigation. **Mr. Waterman** maintained the lawsuit would have prevailed. If the system was determined to be unconstitutional, the Legislature would have had to come together

in an immediate special session to address the legislation. Everyone who had been convicted of a crime, or who had pled guilty to a crime, and had the assistance of appointed counsel, potentially would have had a claim that their counsel was ineffective because the entire system was unconstitutional. There would have been an additional 2000 or more appeals to the Montana Supreme Court. He advised they took about 84 depositions, and he took more than half of them. One of his responsibilities was to find what the system was costing. He stated there is no number because information was not being centralized, localized, or gathered. The Supreme Court administrators told him, as he took their depositions, they were never able to get uniform reporting from all the counties. Counties reported in different ways and were never audited. They estimate at least 100 people a year have been sent to Montana State Prison (MSP) who are inappropriate for that placement. That is either because they were inadequately represented or inadequately represented at sentencing. That is a $5 million expenditure. If the system is improved, at least 100 individuals a year can be diverted from MSP at approximately $50,000 per inmate per year. The bill puts in place a system that will correct 30 years of delay.

{Tape: 3; Side: B}

Pam Bucy, Assistant Attorney General, advised she is the attorney working on the lawsuit that the ACLU filed against the State of Montana. She indicated she did not agree with everything that **Mr. Waterman** said, but confirmed they approached the ACLU to postpone the trial until this May to give the Legislature the opportunity to work on this. Just like the school finance case, regardless of what happened, it had to come back to this body to be dealt with. They did it not because they thought they would lose the lawsuit, but it was done because it is the right thing to do and this is the place the issue needs to be settled. The Attorney General's office assisted in prosecuting two cases. One was a juvenile case out of Miles City that involved seven defendants. That case did not go to trial, and did not even get close to trial. One defendant, where the attorney did not even interview the co-defendants, charged the State of Montana $300,000 for the defense of that case. Six other defendants also had their attorneys submit bills. Another case was the Bar-Jonah case out of Cascade County. In that case, the defense bill was $600,000. They think this bill will result in cost savings. The Supreme Court Administrator currently has no way to audit or control costs. This bill sets up a system that will mean a cost savings for Montana. She commended the interim committee and **SEN. MCGEE.**

Scott Crichton, Executive Director, ACLU Montana, expressed gratitude for the cooperation everybody has shown in trying to solve a real problem for real people. He thanked **SEN. MCGEE** in particular for his statesmanlike leadership in tackling a very difficult problem with an open mind. He provided handouts to the committee. These included a summary of a Supreme Court decision *Gideon v. Wainwright* and a letter that **Sheri Heffelfinger, Research Analyst,** received from David Carroll, who offered technical assistance from the National Legal Aid and Defender Association (NLADA). The fourth handout was a series of stories of people and how their lives were impacted when they have to wait two years in jail to see a public defender. The Constitution is clear about due process and a speedy trial. The bill is aimed at addressing that. The final handout concerned Heath and Human Services poverty guidelines.

EXHIBIT(fcs51a07)
EXHIBIT(fcs51a08)
EXHIBIT(fcs51a09)
EXHIBIT(fcs51a10)

Gordon Morris, Montana Association of Counties (MACo), testified this issue began in 1999, when a bill passed creating an interim study of the district court system. That resulted in a bill in the 2001 Legislature, SB 176, which was the genesis of state assumption of district courts. In 2003, MACo took it upon themselves to begin another piece of unfinished business and that was the issue associated with the public defender. They did not think it had been done appropriately in SB 176. They brought SB 218, which failed in the 2003 session. This was started long before the lawsuit arose in Montana. They were well on their way by way of the state assumption of district court. He pointed out the significant fiscal note. The counties assume that they paid for the most significant portion of the fiscal note in 2003, with SB 499. MACo worked with the Department of Revenue, surveyed the counties, and identified what counties had paid in the prior year for all district court operations and all variable costs. Variable costs are those costs associated with the public defender system associated with district court. The total dollar amount they came up with is $18.6 million. That amount was returned to Montana as a result of SB 499 inside of the entitlement bill, HB 124. The counties gave the State of Montana $18.6 million to fund fixed and variable costs of district courts. **Mr. Morris** referred to page 6 of the fiscal note. He said the bill not only clarifies the assumption of state costs for public defense but adds a new element--the cost of justice court and municipal court. Justice court costs are $1,040,000 and city municipal court costs are $737,000. The cities and counties are putting another $1.8 million into the pot to fully

fund state assumption of district court and the variable costs associated with the public defender system at the district court level, justice court, and municipal court. This bill is much needed and now is the time to do it.

Linda Stoll, Missoula County, thanked all who worked on the bill. She recalled in the mid-1980s, public defender costs almost broke some counties. The counties were terrified at the prospect. The counties decided to take money from motor vehicles funds to put into a pool to be administered by the Supreme Court office through a reimbursement program. All the counties submitted district court costs and the Supreme Court reimbursed 80% of those costs. If there was any money left over at the end of the year, the balance would be zero by giving each county an amount that was pro-rated based upon its expenditures. This was a reimbursement program that pre-dates state assumption and will help the committee understand why there were failed expectations when SB 176 was passed and later implemented. Under that reimbursement program, there were disputed costs for fitness to proceed ancillary costs. Fitness to proceed is when a defendant comes in and the judge orders the person to go to Warm Springs for a mental evaluation. If they are not fit to proceed, those costs go to the Department of Public Health and Human Services. If they are, the county picks up the costs of everything beyond the examination. That is a policy decision that was made by the District Court Council and it surprised many counties. Up until this time, through the reimbursement process, counties were reimbursed for the expenses associated with the "fitness to proceed" examinations specifically. Those can sometimes be extraordinary costs. As a result, counties are keeping these people in jail. When she was a county commissioner, there were three suicides in the new county jail within one year. Those sorts of costs can be very expensive. She didn't think the method of cost containment by keeping folks in jail is a good one. There are liabilities associated with that. Counties have had to do that because they are no longer being reimbursed for the expenses of room and board. She advised she has been part of the dispute on the question of the fitness to proceed. She referred to page 88 of the bill. Missoula County is one of six counties that will have the special audit done with the purpose of reducing the entitlement costs associated with this bill. Actual costs are defined on page 88, line 11, and will be audited for the purpose of subtracting the counties' amount of the entitlement share for 2003 and 2004. In those years, the counties will have expenses they paid that are categorized as un-reimbursed public defender costs. A large part of those will be the fitness to proceed costs, and they are not currently covered in this bill. For the purpose of deciding how much money a county will have reduced from its entitlement fund, the bill says they will audit the actual costs for 2003 and 2004. That will be

divided by two to get an average annual cost and that will be multiplied by 1.06% to include an inflation rate. The actual costs are all expenses by the county for public defender services in justice court and all expenditures by a county for public defender services in district court that were not reimbursed. Because it says they are going to use actual costs to determine what they subtract from the entitlement fund, she maintained Missoula County will pay twice for not-reimbursed costs. They paid once when they paid them and did not get reimbursed, and a second time when those numbers are included in the amount of money that is subtracted from the entitlement share. She said she was assured by **Greg Petesch, Legislative Counsel,** that they will not really subtract those un-reimbursed costs from the entitlement fund. She maintained the bill clearly says the counties will never get reimbursed for those ancillary costs associated with fitness to proceed. **Ms. Stoll** indicated that **Margaret Ward, Chief Public Defender, Missoula County,** had concerns that the public defenders would no longer be used to represent the children in guardian ad litem cases. The bill seems to be silent on who would represent those children and who would pay those costs. She said she would work diligently with others to come back to the committee prior to executive action with amendments.

Alec Hansen, League of Cities and Towns, testified that currently the cities and towns pay about $741,000 for public defense. The bill takes that out of the entitlement based on a formula of $1.70 per capita. The counties would not have to be concerned about public defenders any more. He thought that was a good idea in terms of policy. There will be winners and losers, particularly in some of the smaller towns. He maintained the real liability is the cost of doing nothing. This is a good bill, it needs to be done, and the cities and towns support it. It causes a little consternation among the membership of his organization, but it is worth it. He thanked all those who worked on the bill.

Harold Blattie, MACo, referred to #12 in the fiscal note, which changes the entitlement share numbers for the two consolidated governments and the cities. The numbers in the entitlement share that are used as an offset for counties were based on FY 04 actual costs and a survey conducted by MACo last summer. The number the interim committee seized upon was $1.46 million for the counties' share of the public defender costs. The apportionment of the cost is based on a per capita formula. Butte-Silverbow indicated they were being charged twice--more than double what their true costs were. He said they were correct in that they were being assessed the actual costs

reported in the MACo survey and were also being assessed a city component.

{Tape: 4; Side: A}

He explained an amendment to the bill that would reallocate that city component to the rest of the cities. He urged the committee to look favorably on the amendment.

EXHIBIT(fcs51a11)

Jami McCall, City of Billings, advised, initially, Billings was resistant to the bill because they have an excellent public defender program and wanted to maintain local control. They recognize this is good bill that needs to go forward. A comprehensive system is needed. They wanted to go on record in support.

Joe Mazurek, City of Great Falls, stated this is one of the most important bills to be considered this session. He commended **SEN. MCGEE** and the Law and Justice Committee and noted the Attorney General and the ACLU sought a legislative solution. They initially had some concern about the funding mechanism, but no longer do, and support the bill.

Charles Brooks, Billings County Commissioners, said the commissioners stand behind the bill and urge approval.

Jacqueline Lenmark, ACLU, said this was an extraordinary collaboration between parties. The bill is carefully thought out and crafted. She said the bill must pass because it is the right thing to do. It will be expensive, but these costs are being paid now and are not getting collected or reviewed. She said those who had been working on the bill continually reviewed every version of it. They wanted to be sure the litigation is resolved by this legislation and there is no possibility of any successful court challenge to the public policy or the statutes contained in the bill. The first set of amendments, #11, are primarily technical amendments. The bulk of them relate to the removal of the notion of partial indigence in the bill. When the substantive provisions were removed, there were a number of references throughout the statute that were not caught. There is a correction of the section dealing with the prosecution of crimes committed while a defendant is incarcerated in prison or in jail and to correct the references to the funding of that and the reimbursement to the counties. The burden of that falls primarily on Anaconda-Deer Lodge, but occasionally on other counties. As now drafted, that amendment correctly reflects the intentions of all of the parties. All of the parties agree that

the amendments are necessary and appropriate. The amendment the counties and cities referred to are set #12 and the ACLU and the Department of Justice have no position on that. She held the program must be adequately funded if it is to be successful or the litigation will not be fully resolved and will have to be determined by the court. She expressed concern that some of the assumptions in the fiscal note are not accurate. Fully accurate assumptions are not possible because of the lack of knowledge all parties have of the cost of this system. She addressed the Missoula County issue and said she learned statutory construction and interpretation from **Mr. Petesch** when she was at the Legislative Council in 1976. She indicated there would not be a double deduction in the way that the withholding from the entitlement share is calculated. The Department of Justice and the ACLU agree that if that policy issue in this litigation can be resolved, they will support that resolution. That is the reason they asked for more time before executive action and she believes it is possible to craft a resolution. She contended incorporating the audit into the legislation was brilliant because there is not adequate detail to make a good policy decision going forward. The audit will be of benefit in the next legislative session when looking at the necessary appropriation to fund this program.

Kande Matthew Jenkins, Advocate for Families Falsely Accused of Abuse and Neglect, spoke in favor of the bill. They contend there will be money saved in other areas of the state budget by having adequate and proper defense for all persons that are brought before the court. In one such case, if there had been proper defense, $912,000 of children's mental health money would have been saved. In another case, two years of unauthorized foster care would have been saved.

Betsy Brandborg, State Bar of Montana, said her organization represents all lawyers in the state of Montana. She quoted Martin Luther King who said injustice anywhere is a threat to justice everywhere. She said the last witness spoke to the type of unquantifiable costs that she has been encountering in her position as the Bar Counsel who talks to unhappy family members who are represented within the public defender system, not necessarily always the defendants themselves. Another unquantifiable cost that is worth considering, in terms of adequate funding for this bill, is the lawyers in the system. She had two recent calls from lawyers who chose to no longer be public defenders. In Missoula County there were several public defenders who were privately and publicly admonished and disciplined because their workload is unmanageable and they dropped the ball. She said lawyers, defendants, families, and friends are walking away with a bitter taste and a disrespect for

government and society's structure. She urged adequate funding for this bill.

Pastor Cooke, Kaddish, said his organization was established in 1989, as a result of pastors being falsely accused and it led to involvement with Families Falsely Accused. He has a family of seven children. His youngest daughter lost both kidneys and that brought the family into the system. It was decided by Child Protective Services (CPS) that sexual abuse was involved. This occurred in the state of Washington. The state of Washington dropped the case but passed it to Montana. His third daughter has seen over twenty therapists and psychiatrists. Nineteen of those therapists did not tell CPS what they wanted to hear. His son has languished for six years in the system. **Pastor Cooke** was self-supporting and they were a self-contained family. He was made indigent by the system and funds are being expended to this day. Even the prosecution acknowledged there never was any evidence. He spent about four or five months in a detention center. He saw people commit suicide, people with unaddressed medical needs which could lead to litigation, and innumerable prisoners trying to contact their counsel. Reform is needed in the whole system. He knows this will cost more, but the alternative is much worse.

Melissa Worthan, Missoula, testified she was also a parent falsely accused of child abuse and neglect. She observed the state could have saved $24,000 in her case. She asked for support for the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. COBB asked if any new staff would be added. **SEN. MCGEE** said, yes. They tried to craft the bill to address a variety of situations. Missoula County has an excellent county employee public defense program. Flathead County has a contract system. Both of those two judicial districts are happy with how things are working. The public defenders are happy, the prosecutors are happy, and the judges are happy. As far as he knows, the defendants are happy. The bill allows for the Chief Public Defender to create regions. The regions will have deputy public defenders. Those deputy public defenders, together with the commission and the Chief Public Defender will decide what system will seem to fit best in a particular area. That will include the number of cases that a public defender will be able to manage successfully using NLADA standards that have been adopted

nationwide. **SEN. COBB** asked if there is enough staff for the number of caseloads. **SEN. MCGEE** said, yes. **SEN. COBB** asked where the 133% came from. **SEN. MCGEE** said the Law and Justice Interim Committee had a subcommittee dealing with public defense and they looked at a variety of states including Washington, Oregon, Vermont, Wyoming, Idaho, etc. A variety of numbers are used to define upper level of indigence. Wyoming used 125%. The subcommittee decided the policy, the Law and Justice Interim Committee accepted that and it has come forward as part of this bill.

SEN. ESP referred to testimony about finances and the growth factor that is built into the numbers. His perception was, there would be growth factor based on counties and cities no longer having a dog in the fight and a change in behavior because of it. There would be an offsetting benefit from services being coordinated. He wondered if those would offset each other or if there would be a net cost to the state because of that change in behavior. **SEN. MCGEE** said when they started with the public defender idea, they looked primarily at felony criminal cases and when a person is entitled to public defense. It was brought up that there is a requirement for public defense in misdemeanor cases. That includes the justice courts, cities and municipal courts, and civil commitments. The bill tries to address every single court in the state of Montana, every single time anyone is entitled to public defense, whether criminal or civil. He thought **Ms. Stoll** has a legitimate concern about the numbers and whether or not the reimbursements are being made appropriately. There is a policy decision to make with regard to fitness to proceed. He thought if the prosecuting attorney decides to order the fitness to proceed determination, the county attorney should pay for it. If the public defender needs a fitness to proceed determination, then the state should pick it up. If they both agree, the cost would be shared. When he first gave the information on the floor of the Senate, that was his thinking. Later he found out the the un-reimbursed costs would be factored into the audit.

{Tape: 4; Side: B}

They tried to address every single issue and circumstance they could. He did not see those expenses for travel and housing for fitness to proceed as a significant policy issue and he thought they should default to it. He didn't know if anyone could say what the cost would be. **SEN. ESP** asked **Jim Oppedahl, Supreme Court Administrator**, if the state becomes responsible for the variable costs of indigent defense, if there would be a change of behavior by the counties that would escalate those costs. **Mr. Oppedahl** advised he started as Court Administrator in May of

2003, after the session. Some behavioral changes are not always predictable. There is a variable dollar amount that will be spent year to year that depends on the kinds of cases. He believes this bill is the best solution because it puts a system together. The management of that system is put in one place and makes those who run the system accountable. **SEN. ESP** agreed this is needed and that the shared accountability will not be a factor.

SEN. LIND asked **Ms. Brandborg** if she sees an opportunity for improving the workloads in Missoula. **Ms. Brandborg** said absolutely. This is not unique to Missoula. Typically, new lawyers start in a public defender's office. There is a revolving door of new attorneys. The person who is walking away from it had been practicing for twenty years in the public defender arena. In Missoula, because the revolving door is moving so fast, they don't have enough attorneys to handle the complaints. The district court judges have taken it upon themselves to appoint regular practicing lawyers to represent criminal defendants. It is another train wreck waiting to happen. They are charging $60 an hour and are spending quite a bit more time because they aren't familiar with the work. Lawyers who are being appointed are being overwhelmed. In other places, people are sitting in jail for a long time waiting for even one phone call.

SEN. SCHMIDT asked **Ms. Bucy** how many lawyers will be needed to run this system. **Ms. Bucy** did not know how many would be needed eventually but they looked at the system that is currently in place and the caseloads those lawyers are working under. Each region can adapt to what it needs. **SEN. SCHMIDT** asked about the revolving door and if that might not happen with this new kind of system. **Ms. Bucy** was almost certain that it will not happen. The system will provide oversight, standards, and structure. She thought qualified people will continue to do this work. **SEN. SCHMIDT** asked about the plan for the number of lawyers needed in a region. **Ms. Bucy** clarified cities will be included in a region. She anticipated regional offices in populated areas. There will be a contract manager to deal with the smaller counties. It is designed to look at where the most amount of services are needed and how to reach the most amount of people in the state. **SEN. SCHMIDT** asked about amendments and **SEN. MCGEE** advised there will be two more. **SEN. SCHMIDT** asked **Ms. Stoll** to respond. **Ms. Stoll** referred to page 22, line 5. The new language in the psychiatric evaluation in 46-14-202 says the cost of the examination only. She thinks that turns the policy decision by the district court counsel into statute and they won't pay for anything else. When the person is determined to be unfit, the costs go to the Department of Public Health and Human

Services (DPHHS). Other associated expenses are provided in 4614-221(5). **SEN. SCHMIDT** asked **Mr. Waterman** about the 100 people in the correctional system who have been wrongly sentenced. **Mr. Waterman** said the number is the best estimate of individuals who have been inappropriately placed in MSP. They believe additional savings will come from that. There are other additional savings. As individuals sit in prison, they will plead to crimes simply to get the sentence done. There are cases where people are sitting and waiting for court proceedings and by the time they get to the court they are released because the length of time that they have served pre-conviction is longer. The system is largely broken and has been broken for years. This bill replaces that broken system with a system that responds appropriately and there will be savings.

CHAIRMAN COONEY asked, if the bill passes, if they could reduce the budget for the Department of Corrections based on anticipated savings as a result of not sending so many people to prison. **Mr. Waterman** advised the only way to address the criminal justice system is to screen early on. That will keep a number of individuals out of the system. It is somewhat expensive to put into place initially, but it may keep people from migrating to the more expensive end of the correctional system. The correctional system has been responsive to a broken public defender system for years. That is part of the reason for the enormous growth that they have seen and have paid for over time. By making sure that the public defender system at the front end works effectively, in the long run they will see the savings come through at the correctional level.

SEN. LAIBLE asked if there will be a way to look at higher costs in certain areas and why. **SEN. MCGEE** said the purpose of the audit is to try to find the dollar amount to be reduced from the entitlement share going back to the counties. The six counties were chosen because there would be no reason to audit smaller jurisdictions. **SEN. LAIBLE** appreciated the oversight by the state in the bill and the possibility to reign in those regions and municipal governments that don't do this in the most cost-effective way. **SEN. MCGEE** replied Flathead County has a contract system and it would be the wrong thing to do for the Chief Public Defender to say all those attorneys would have to become state employees. The system there is working fine. Missoula County has a great public defender system. If the Chief Public Defender and the Commission decide to leave them as county employees, they would be able to do that. In District 22, which is Stillwater, Carbon, and Big Horn Counties, they don't want to be part of the Billings system. The Billings system has public defenders who are county employees. The Chief Public Defender, the Commissioner, and all the Deputy Commissioners will look at the

systems that are currently in place and go with the system that best fits those locales and the desires of those who do this work. Every public defender, whether a contract person, county employee, or state employee, will go through a rigorous training cycle. They will learn standards and procedures that are common throughout the entire public defense system. That is the goal of this bill. The right numbers won't be known until this system has been in place for awhile with an accounting system that is uniform across the state.

SEN. COBB wondered if the fiscal note for the second year should be a lot higher because there are not enough public defenders for the caseloads. There could be a bigger budget in the next biennium. He thinks they are short money to get this up and running. Otherwise, it is still going to fail because there aren't enough people.

SEN. ESP requested that either **Mr. Oppedahl** or **Mr. Blattie** provide the committee with historical data about the cost of indigent defense from 1999 through the first half of 2005 before the committee takes executive action.

{Tape: 5; Side: A}

Closing by Sponsor:

SEN. MCGEE advised this is a significant policy decision. He noted a lot of people worked on this bill, including **SEN. WHEAT, REP. PARKER,** those on the Law and Justice Committee, the Judiciary Committee, as well as staff including Valencia Lane, Mr. Doig, and Harry Freeborn. He recommended the committee work with the staff. He believed ten years from now there will be a net savings to the state of Montana. With adequately trained and staffed public defense, there will be a reduction in the number of people incarcerated and the number challenging a case because of ineffective assistance of counsel.

ADJOURNMENT

Adjournment: 12:05 P.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs51aad0.PDF)

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 5
DATE 3-8-05
BILL NO. SB146

Amendments to Senate Bill No. 146
2nd Reading Copy

Requested by Senator Dan McGee

For the Senate Finance and Claims Committee

Prepared by Valencia Lane
March 7, 2005 (10:27pm)

1. Title, page 1, line 28.
Following: line 27
Strike: "26-2-505,"

2. Title, page 1, line 29.
Following: "41-5-111,"
Strike: "41-5-112,"

3. Page 3, line 17.
Following: "commission"
Strike: "may"
Insert: "shall"

4. Page 3, line 18.
Following: line 17
Strike: "provide that public defenders work with a court to establish assignment rosters or other methodologies to"

5. Page 9, line 30.
Following: "(4)"
Insert: "establish processes and procedures to"

6. Page 12, line 12.
Following: "(b)"
Strike: "consult with the courts within the region and"
Following: "establish"
Strike: "agreed-upon"

7. Page 14, line 1.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

8. Page 14, line 8.
Following: "**Eligibility --**"
Strike: "**processing fee --**"

9. Page 14, line 9.
Following: "~~indigence~~ --"
Strike: "**contributions toward costs --**"

10. Page 14, line 30.
Following: "application"
Strike: "or pay the processing fee"
Following: "in"
Insert: "civil"

11. Page 15, line 8.
Strike: "and"
Insert: "or"

12. Page 16, line 11.
Following: "screening"
Strike: "and collect processing fees and contribution amounts payable"

13. Page 16, line 18.
Following: "screening"
Strike: "or collection activities"

14. Page 24, line 27.
Following: "~~corrections~~"
Strike: "office of state public defender"

15. Page 33, line 3.
Strike: "[SECTION 74(5)]"
Insert: "[section 72(5)]"

16. Page 39, line 7 through line 11.
Strike: section 24 in its entirety
Renumber: subsequent sections

17. Page 56, line 2 through line 10.
Strike: section 38 in its entirety
Renumber: subsequent sections

18. Page 60, line 29 through line 30.
Following: "nurse or" on line 29
Strike: ", if" on line 29 through "community," on line 30

19. Page 61, line 3.
Following: "~~The~~"
Strike: "If the examination cannot be done without a commitment, the"
Insert: "The"

20. Page 61, line 12 through line 14.
Following: "3-5-901." on line 12
Strike: remainder of line 12 through "ordered." on line 14

21. Page 79, line 5 through line 15.

Strike: section 63 in its entirety
Insert: **"Section 61.** Section 53-30-110, MCA, is amended to read:

"53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and~~ or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner~~, properly~~. The statement must be certified by a district judge of the county.

(2) The statement must be sent to the department of corrections for its approval. After such approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

(3) Public defender costs, if any, must be paid pursuant to the Montana public defender act provided in [section 1 through 4 and 6 through 14]."

{*Internal References to 53-30-110: x7-6-2426*}"

22. Page 86, line 21.
Strike: "70(5)"
Insert: "68(5)"

23. Page 89, line 29.
Strike: subsection (2) in its entirety
Insert: "(2) [Sections 17 through 19, 24 through 29, 34 through 67, and 74] are effective July 1, 2006."

- END -

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 6
DATE 3-8-05
BILL NO. SB146

Amendments to Senate Bill No. 146
2nd Reading Copy

Requested by Senator Dan McGee

For the Senate Finance and Claims Committee

Prepared by Valencia Lane
March 7, 2005 (8:53pm)

1. Page 28, line 21.
Strike: "$30,735"
Insert: "$20,707"

2. Page 28, line 22.
Strike: "$113,999"
Insert: "$53,057"

3. Page 28, line 23.
Strike: "$614"
Insert: "$694"

4. Page 28, line 24.
Strike: "$234"
Insert: "$265"

5. Page 28, line 25.
Strike: "$2,573"
Insert: "$2,910"

6. Page 28, line 26.
Strike: "$130"
Insert: "$147"

7. Page 28, line 27.
Strike: "$10,649"
Insert: "$12,044"

8. Page 28, line 28.
Strike: "$961"
Insert: "$1,087"

9. Page 28, line 29.
Strike: "$1,028"
Insert: "$1,163"

10. Page 28, line 30.
Strike: "$2,648"
Insert: "$2,995"

11. Page 29, line 1.
Strike: "$148,763"
Insert: "$168,260"

12. Page 29, line 2.
Strike: "$2,129"
Insert: "$2,409"

13. Page 29, line 3.
Strike: "$48,046"
Insert: "$54,343"

14. Page 29, line 4.
Strike: "$1,186"
Insert: "$1,341"

15. Page 29, line 5.
Strike: "$697"
Insert: "$788"

16. Page 29, line 6.
Strike: "$234"
Insert: "$265"

17. Page 29, line 7.
Strike: "$377"
Insert: "$426"

18. Page 29, line 8.
Strike: "$1,665"
Insert: "$1,884"

19. Page 29, line 9.
Strike: "$1,250"
Insert: "$1,414"

20. Page 29, line 10.
Strike: "$1,301"
Insert: "$1,472"

21. Page 29, line 11.
Strike: "$2,070"
Insert: "$2,341"

22. Page 29, line 12.
Strike: "$2,775"
Insert: "$3,138"

23. Page 29, line 13.
Strike: "$926"

Insert: "$1,048"

24. Page 29, line 14.
Strike: "$520"
Insert: "$588"

25. Page 29, line 15.
Strike: "$3,721"
Insert: "$4,209"

26. Page 29, line 16.
Strike: "$6,191"
Insert: "$7,003"

27. Page 29, line 17.
Strike: "$2,953"
Insert: "$3,340"

28. Page 29, line 18.
Strike: "$4,151"
Insert: "$4,695"

29. Page 29, line 19.
Strike: "$1,106"
Insert: "$1,251"

30. Page 29, line 20.
Strike: "$4,837"
Insert: "$5,471"

31. Page 29, line 21.
Strike: "$1,226"
Insert: "$1,387"

32. Page 29, line 22.
Strike: "$5,193"
Insert: "$5,874"

33. Page 29, line 23.
Strike: "$458"
Insert: "$518"

34. Page 29, line 24.
Strike: "$6,304"
Insert: "$7,130"

35. Page 29, line 25.
Strike: "$177"
Insert: "$200"

36. Page 29, line 26.
Strike: "$511"
Insert: "$578"

37. Page 29, line 27.
Strike: "$601"
Insert: "$680"

38. Page 29, line 28.
Strike: "$2,628"
Insert: "$2,972"

39. Page 29, line 29.
Strike: "$626"
Insert: "$709"

40. Page 29, line 30.
Strike: "$1,381"
Insert: "$1,562"

41. Page 30, line 1.
Strike: "$1,576"
Insert: "$1,783"

42. Page 30, line 2.
Strike: "$1,019"
Insert: "$1,152"

43. Page 30, line 3.
Strike: "$1,048"
Insert: "$1,186"

44. Page 30, line 4.
Strike: "$130"
Insert: "$147"

45. Page 30, line 5.
Strike: "$2,990"
Insert: "$3,382"

46. Page 30, line 6.
Strike: "$2,347"
Insert: "$2,654"

47. Page 30, line 7.
Strike: "$358"
Insert: "$405"

48. Page 30, line 8.
Strike: "$298"

Insert: "$338"

49. Page 30, line 9.
Strike: "$778"
Insert: "$880"

50. Page 30, line 10.
Strike: "$416"
Insert: "$470"

51. Page 30, line 11.
Strike: "$4,878"
Insert: "$5,517"

52. Page 30, line 12.
Strike: "$7,369"
Insert: "$8,335"

53. Page 30, line 13.
Strike: "$231"
Insert: "$262"

54. Page 30, line 14.
Strike: "$87,731"
Insert: "$99,230"

55. Page 30, line 15.
Strike: "$6,504"
Insert: "$7,356"

56. Page 30, line 16.
Strike: "$5,387"
Insert: "$6,093"

57. Page 30, line 17.
Strike: "$1,294"
Insert: "$1,463"

58. Page 30, line 18.
Strike: "$1,526"
Insert: "$1,726"

59. Page 30, line 19.
Strike: "$14,761"
Insert: "$16,695"

60. Page 30, line 20.
Strike: "$41,742"
Insert: "$47,213"

61. Page 30, line 21.
Strike: "$239"
Insert: "$270"

62. Page 30, line 22.
Strike: "$361"
Insert: "$408"

63. Page 30, line 23.
Strike: "$830"
Insert: "$938"

64. Page 30, line 24.
Strike: "$439"
Insert: "$497"

65. Page 30, line 25.
Strike: "$39"
Insert: "$44"

66. Page 30, line 26.
Strike: "$916"
Insert: "$1,036"

67. Page 30, line 27.
Strike: "$551"
Insert: "$624"

68. Page 30, line 28.
Strike: "$239"
Insert: "$270"

69. Page 30, line 29.
Strike: "$25,608"
Insert: "$28,964"

70. Page 30, line 30.
Strike: "$277"
Insert: "$313"

71. Page 31, line 1.
Strike: "$9,830"
Insert: "$11,118"

72. Page 31, line 2.
Strike: "$328"
Insert: "$371"

73. Page 31, line 3.
Strike: "$9,254"

Exhibit 6, page 7 is not on the Law Library's disc.

The Historical Society, 406-444-2681, houses the original documents.

86. Page 31, line 16.
Strike: "$136"
Insert: "$154"

87. Page 31, line 17.
Strike: "$164"
Insert: "$186"

88. Page 31, line 18.
Strike: "$114"
Insert: "$129"

89. Page 31, line 19.
Strike: "$1,467"
Insert: "$1,659"

90. Page 31, line 20.
Strike: "$1,286"
Insert: "$1,454"

91. Page 31, line 21.
Strike: "$1,826"
Insert: "$2,066"

92. Page 31, line 22.
Strike: "$2,898"
Insert: "$3,278"

93. Page 31, line 23.
Strike: "$205"
Insert: "$231"

94. Page 31, line 24.
Strike: "$7,026"
Insert: "$7,947"

95. Page 31, line 25.
Strike: "$1,405"
Insert: "$1,589"

96. Page 31, line 26.
Strike: "$3,551"
Insert: "$4,017"

97. Page 31, line 27.
Strike: "$239"
Insert: "$270"

98. Page 31, line 28.

Strike: "$281"
Insert: "$318"

99. Page 31, line 29.
Strike: "$2,968"
Insert: "$3,357"

100. Page 31, line 30.
Strike: "$2,984"
Insert: "$3,375"

101. Page 32, line 1.
Strike: "$423"
Insert: "$479"

102. Page 32, line 2.
Strike: "$322"
Insert: "$364"

103. Page 32, line 3.
Strike: "$1,636"
Insert: "$1,850"

104. Page 32, line 4.
Strike: "$5,165"
Insert: "$5,842"

105. Page 32, line 5.
Strike: "$1,047"
Insert: "$1,184"

106. Page 32, line 6.
Strike: "$7,049"
Insert: "$7,973"

107. Page 32, line 7.
Strike: "$670"
Insert: "$758"

108. Page 32, line 8.
Strike: "$2,787"
Insert: "$3,152"

109. Page 32, line 9.
Strike: "$1,244"
Insert: "$1,407"

110. Page 32, line 10.
Strike: "$645"
Insert: "$730"

111. Page 32, line 11.
Strike: "$1,384"
Insert: "$1,566"

112. Page 32, line 12.
Strike: "$920"
Insert: "$1,041"

113. Page 32, line 13.
Strike: "$2,067"
Insert: "$2,338"

114. Page 32, line 14.
Strike: "$2,848"
Insert: "$3,221"

115. Page 32, line 15.
Strike: "$2,990"
Insert: "$3,382"

116. Page 32, line 16.
Strike: "$1,505"
Insert: "$1,702"

117. Page 32, line 17.
Strike: "$633"
Insert: "$716"

118. Page 32, line 18.
Strike: "$744"
Insert: "$841"

119. Page 32, line 19.
Strike: "$203"
Insert: "$230"

120. Page 32, line 20.
Strike: "$1,076"
Insert: "$1,218"

121. Page 32, line 21.
Strike: "$1,895"
Insert: "$2,143"

122. Page 32, line 22.
Strike: "$239"
Insert: "$270"

123. Page 32, line 23.

Strike: "$1,578"
Insert: "$1,785"

124. Page 32, line 24.
Strike: "$9,036"
Insert: "$10,221"

125. Page 32, line 25.
Strike: "$1,719"
Insert: "$1,944"

126. Page 32, line 26.
Strike: "$812"
Insert: "$919"

127. Page 32, line 27.
Strike: "$236"
Insert: "$267"

128. Page 32, line 28.
Strike: "$286"
Insert: "$323"

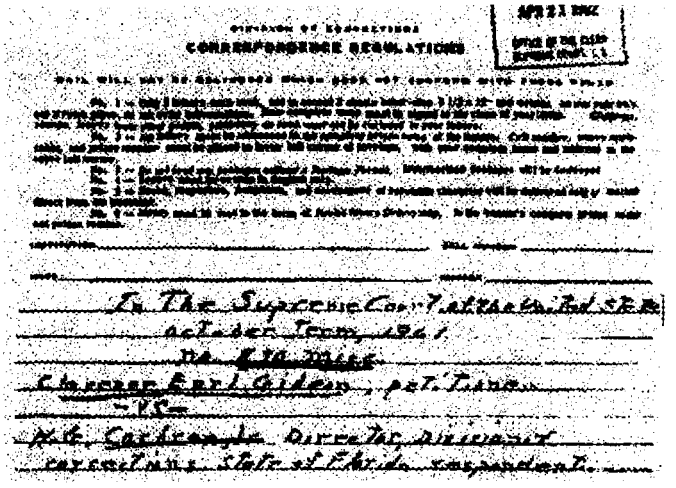
129. Page 32, line 29.
Strike: "$4,092"
Insert: "$4,628"

- END -

Gideon v. Wainwright, 372 U.S. 335 (1963)

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 7
DATE 3-3-05
BILL NO. SB146

"The right of one charged with crime to counsel may not be deemed fundamental in some countries. But it is in ours."


CORRESPONDENCE REGULATIONS

In The Supreme Court of the United States
October Term, 1962
No. 840 Misc.
Clarence Earl Gideon, pet. Pro se
-vs-
H.G. Cochran, Jr. Director, Division of Corrections, State of Florida, respondent.

"Legal representation is essential to a fair trial."

Panama City, Florida, 1961. Panama City, Florida, 1961. Police arrest a drifter, Clarence Gideon, for breaking and entering. Clarence cannot afford a lawyer, so he asks the court to appoint one for him. The judge says the state doesn't have to pay a poor person's legal defense, except for a capital crime.

So Clarence has to represent himself. He's convicted. From his prison cell, he submits a petition for his freedom, written in pencil, to the United States Supreme Court.

The Court grants Gideon a new trial, and appoints famous Washington attorney Abe Fortas (and future Supreme Court justice) to represent him. "In our adversary system of criminal justice," writes Justice Hugo Black, "any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.... Lawyers in criminal courts are necessities, not luxuries... Legal representation is essential to a fair trial. The right of one charged with crime to counsel may not be deemed fundamental in some countries. But it is in ours."

A jury acquits Gideon and sets him free.

For more...

Constitution Center: Clarence Gideon's Road to the Supreme Court

FindLaw® full text of decision. Oyez® audio of arguments.

AMENDMENT 6 The Right to Counsel
Passed by Congress September 25, 1789. Ratified December 15, 1791.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. [^].

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A web & radio project of the ACLU of Montana & HearingVoices

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 8
DATE 3-8-05
BILL NO. SB 146

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

Date: July 16, 2004

To: Sheri Heffelfinger, Research Analyst
Legislative Sub-Committee on Reforming Montana's Public Defense System,
Law & Justice Interim Committee

From: David J. Carroll, Director of Research and Evaluations
National Legal Aid & Defender Association (NLADA)

*A Primer on Indigency Determination**

All states limit publicly funded defense services to those financially unable to retain counsel on their own behalf. *Gideon* requires no more. However, in order to ensure that indigent defendants have access to the representation to which they are constitutionally entitled, systems for screening financial eligibility must include three procedural safeguards.

First, pre-determined financial criteria related to client resources and local economic factors must be in place. Second, national standards direct that client eligibility determinations be performed by public defense agencies or a neutral screening agency of the court.[1] A financial "disqualification" should be subject to review and reversal by a judge. Third, these determinations must occur in a timely manner.

The manner in which defendants are screened for indigency and the timing of the assignment of counsel can have a significant impact on the quality of defense provided. Screening mechanisms that are too restrictive prevent defendants who lack the financial means from having any attorney at all. Systems lacking pre-determined criteria and those without an appropriate locus of decision-making authority expose indigent defendants to arbitrary denials and are vulnerable to the potential for manipulation and abuse. Timely eligibility determinations are necessary to permit immediate commencement of representation so that a public defender may begin work on the case early on, a critical measure for effective representation.

The *Guidelines for Legal Defense Systems in the United States* issued by the National Study Commission on Defense Services state that, "[e]ffective representation should be provided to anyone who is unable, without substantial financial hardship to

[1] *NSC*, Guideline 1.6. *Cf.* ABA *Defense Services*, Standard 5-7.3.

himself or to his dependents, to obtain such representation."[2] "Substantial hardship" is also the standard promulgated by the ABA.[3] While ABA Defense Services Standard 5-7.1 makes no effort to define need or hardship, it does prohibit denial of appointed counsel because of a person's ability to pay part of the cost of representation, because friends or relatives have resources to retain counsel, or because bond has been or can be posted. In practice, the "substantial hardship" standard has led many jurisdictions to create a tiered screening system. At some minimum asset threshold, a defendant is presumed eligible without undergoing further screening. Defendants not falling below the presumptive threshold are then subjected to a more rigorous screening process to determine if their particular circumstances (including seriousness of the charges being faced, monthly expenses, local private counsel rates) would result in a "substantial hardship" were they to seek to retain private counsel. The great majority of defendants currently being offered the services of public defenders in Montana should qualify for public counsel under the presumptive standard, thus minimizing the need to use a more expansive screening and verification process. Examples of such presumptive standards include:

- A defendant is presumed eligible if he or she receives public assistance, such as Food Stamps, Aid to Families of Dependent Children, Medicaid, Disability Insurance, or resides in public housing.[4]

- A defendant is presumed eligible if he or she is currently serving a sentence in a correctional institution or is housed in a mental health facility.

For those who do not meet the presumptive standard but who may still qualify under the "substantial hardship" standard, many jurisdictions have developed financial eligibility formulas that take into account a household's net income, liquid assets, "reasonable" necessary expenses and other "exceptional" expenses. The National Study Commission on Defense Services guidelines are more comprehensive than other national standards in guiding this second tier of eligibility determinations. The first step is to determine a defendant's net income (usually verified through documented pay stubs) and liquid assets. Under Guideline 1.5, liquid assets include cash in hand, stocks and bonds, bank accounts and any other property that can be readily converted to cash. Factors not to be considered include the person's car,[5] house,[6] household furnishings, clothing, any

---

[2] Guideline 1.5.

[3] *ABA Standards for Criminal Justice: Providing Defense Services* 5-7.1 states: "Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship."

[4] An additional benefit to using public aid as a presumptive threshold is that other agencies already rigorously screen and verify the person to qualify for such assistance. Using these standards allows a jurisdiction to, in effect, "piggy-back" onto the verification process without duplicating efforts.

[5] A defendant's vehicle may be the only thing keeping him and her off of public assistance by allowing him or her the means to get to work, or comply with conditions of probation or pretrial release such as drug or mental health treatment, or family counseling. In a large geographically expansive counties, including a car in a person' liquid assets may be ultimately more costly than appointing the person a public defender.

property declared exempt from attachment or execution by law, the person's release on bond, or the resources of a spouse, parent or other person.

Next, the screening agency assesses a defendant's reasonable necessary expenses and other money owed for exceptional expenses, like medical care not covered by insurance, or court-ordered family support. Though jurisdictions vary as to what constitutes "necessary" expenses, most include rent, day-care and utilities.

Screeners then determine an individual's available funds to contribute toward defense representation by adding the net income and liquid assets and subtracting from the total the sum of reasonable and exceptional expenses. [(Net Income + Liquid Assets) – (Reasonable + Exceptional Expenses) = Available Funds]. The resulting "available funds" can then be measured against a second tier presumptive eligibility standard. In many jurisdictions, this second presumptive level is tied to a percentage of the Federal Poverty guidelines. For instance, Florida sets its presumptive standard at 250% of the Federal Poverty guideline.[7] Table A-1 (below) shows the 2002 Health and Human Services Poverty Guidelines, by family size and annual income, and compares the 250% and 150% standard for both annual and monthly income.

Table A-1
Federal Poverty Guidelines[8]

Family Size	Poverty Index	150%		250%	
		Annual	Monthly	Annual	Monthly
1	$8,860	$13,290	$1,107.50	$22,150	$1,845.83
2	$11,940	$17,910	$1,492.50	$29,850	$2,487.50
3	$15,020	$22,530	$1,877.50	$37,550	$3,129.17
4	$18,100	$27,150	$2,262.50	$45,250	$3,770.83
5	$21,180	$31,770	$2,647.50	$52,950	$4,412.50
6	$24,260	$36,390	$3,032.50	$60,650	$5,054.17

In some jurisdictions, eligibility screening is terminated if a person's net income and liquid assets exceed these income thresholds, and the person is deemed ineligible for public appointment of counsel. In others, persons can be deemed eligible if their net income and liquid assets exceed these thresholds, but reasonable and exceptional expenses bring them under the threshold.

---

[6] It is assumed that the goals of the criminal justice system are not served by rendering homeless a charged-but-unadjudicated defendant, or his or her family.

[7] FL. Stat. §27.52. Though a state-by-state, county-by-county study has not been conducted to determine the total number of jurisdictions that use the Federal Poverty guidelines and some presumptive percentage thereof, the evaluation team's range of experience suggests a national norm of approximately 150% of the federal rate.

[8] *Federal Register*, Vol. 67, No. 31, February 14, 2002, pp. 6,931-6,933. For each additional household member, add $3,080.

One example of jurisdiction employing such a financial determination system is New York City. There, the formula also takes into account the seriousness of the charge. As with most jurisdictions, defendants in New York City whose gross income falls at or below the current federal poverty index are presumptively eligible for assigned counsel. However, even defendants with household gross incomes above these levels are eligible for assigned counsel, if they are financially unable to retain counsel. In determining whether a defendant is unable to retain counsel, the court considers the household's other financial commitments, including rent or mortgage payments, the cost of food and utilities, debts, the likely cost of counsel, unusual expenses, and available liquid assets.[9]

As in Florida, New York City's guidelines provide that defendants charged with misdemeanors are presumptively eligible for assigned counsel when the gross household income is at or below 250% of the federal poverty standard. The guidelines similarly provide that defendants charged with felonies are presumptively eligible for assigned counsel when the gross household income is at or below 350% of the federal poverty standard.

In lieu of the Federal Poverty guidelines, other jurisdictions take into account the going rate for private counsel to represent a defendant on various case types. For instance, private attorneys may routinely ask for a $5,000 retainer to represent a person on a felony indictment, in which case a defendant may fall above the 150% Federal Poverty index ($1,107.50 monthly available funds) but would still face a "substantial hardship" if he or she were to retain private counsel.

The three-tiered screening system described above has an added benefit to the overall justice system. In many jurisdictions, public defenders employ investigation interns to conduct these eligibility screenings at little or no cost.[10] These interns regularly go to the jail each morning and afternoon to conduct the financial screening on all people brought in on new charges. The appointment of the public defender can be made as soon as the eligibility is determined, and attorneys are able to make bail recommendations earlier, reducing the number of beds in the County jail used for pre-trial detention. And early appointment of counsel allows earlier investigation, discovery and preparation, which results in more prompt decisions regarding either negotiated dispositions or going to trial.

---

[9] Once the public defender has been assigned, a court may not relieve it on the ground of non-indigency unless the defender agency first moves to be relieved. Construing County Law §722-d, the Appellate Division has stated that "the report of counsel [is] a predicate to any action on the part of the court to relieve counsel of the assignment." *Matter of The Legal Aid Society v. Samenga*, 39 A.D.2d 912, 913 (2d Dept. 1972). Thus, for example, where a court suspects that a defendant has the resources to retain counsel because bail has been posted, at most it would ask the assigned attorney to review the accused's eligibility, keeping in mind that persons who contribute to bail cannot be required to assign their money for purposes of hiring an attorney unless they also are obligated to contribute to the defendant's support. Therefore, where bail is posted by the accused's spouse, that money can be considered as an asset in evaluating eligibility, but bail money posted by an employer, family friend or member of the defendant's extended family (aunt, uncle, cousin) ordinarily should not be considered as an asset of the accused.

[10] Other jurisdictions employ Pre-Trial Services departments that are able to make financial eligibility determinations at the same time as screening to determine eligibility for release on one's own recognizance.

* Excerpted from a lengthier letter from Mr. Carroll to Ms. Heffelfinger

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 8
DATE 3-8-05
BILL NO. SB146

BILL SUMMARY: SB 146
MONTANA PUBLIC DEFENDER ACT

By Request of Senator Dan McGee, Bill Sponsor

Prepared by Sheri Heffelfinger, Research Analyst, Bill Drafter
SB 146, 2nd Reading Copy (version SB0146.02)
March 7, 2005

The meat of the bill is in NEW SECTIONS 1 through 15:

Section 1. Short Title.

Section 2. Definitions.

Section 3. Purpose.

Section 4. Scope and structure of the state wide public defender system.

Structure: A public defender commission would supervise the system, develop a strategic plan, divide the state into regions, provide for the delivery of services:
- by contract with a single attorney or law firm or with a consortium of attorneys or law firms; or
- through a regional office with state staff (see section 11)

Scope: Covers all courts (district, justice, municipal, and city courts)
Covers all the cases listed in subsection (4)
- (4)(a) lists cases where a person is entitled to a PD because they are indigent
- (4)(b) lists the cases where a person is entitled to a PD even if not indigent

Section 5. Public defender commission composition and membership.

This section provides that a Public Defender Commission of 11 members would be appointed by the governor as follows:
- 2 attorneys nominated by Supreme Court
- 3 attorneys nominated by President of State Bar
  - -- 1 experienced in felony defense and was a full-time PD for at least 1 yr
  - -- 1 experienced in defense of juvenile delinquency and abuse and neglect cases involving the Indian Child Welfare Act
  - -- 1 who represents criminal defense lawyers
- 2 from general public, not attorneys, judges (active or retired)
- 1 nominated by President of Senate
- 1 nominated by Speaker of the House
- 1 advocate for indigent persons

- 1 advocate for racial minorities
- 1 advocate for people with mental illnesses and dev. disabilities
- 1 employed by an organization providing addictive behavior counseling
- 1 with significant experience in defense of criminal or other cases subject to the public defender act who has a strong commitment to quality representation for indigent defendants

Section 6. Commission duties and responsibilities.

This section provides that the Public Defender Commission would:
- hire and supervise a Chief Public Defender
- set statewide standards and policies covering:
  - -- education
  - -- experience
  - -- caseload and workloads
  - -- access to support services (paralegals, investigators, etc)
  - -- continuing education/training
  - -- performance criteria and evaluation
- develop strategic plan and approve budget proposals
- develop process for handling cases presenting conflicts of interests
- ensure process for recording and reporting detailed expenditure and caseload data
- submit a detailed biennial report to the Governor, Supreme Court, and Legislature

Section 7. Office of state public defender, personnel, compensation, expenses.

This section:
- establishes central office
- establishes the structure of the central office
  - -- chief public defender
  - -- administrative director
  - -- chief appellate defender
  - -- chief contract manager
  - -- training coordinator
  - -- deputy public defenders in each region
  - -- assistant public defenders (state staff to assist regions if requested)
  - -- other positions as needed
- lists other types of operational expenses that are paid by the office:
  - -- witness fees
  - -- transcript fees

Section 8. Chief public defender -- duties.

This section:

- outlines the duties of the Chief Public Defender to:
  - -- present to commission a regional strategic plan
  - -- supervise regional deputy public defenders and state staff of assistant public defenders
  - -- ensure conflict cases are handled appropriately
  - -- ensure detailed expenditure and caseload data is kept
  - -- manage caseloads
  - -- establish standards for assigning capital cases consistent with Supreme Court guidelines
  - -- establish and supervise a training program
  - -- establish performance and evaluation criteria
  - -- etc.

Section 9. Office of appellate defender -- chief appellate defender.

This section provides that:

- the Chief Public Defender hires and supervises the chief appellate defender
- the Chief Appellate Defender supervises the Office of Appellate Defender (contacted services and state appellate staff in regional offices)
- the Office of Appellate Defender, not the public defender who handled the original case, would handle all appeals in which the defendant is entitled to a public defender

Section 10. Training program -- coordinator.

This section:

- provides that a centralized training coordinator would be appointed by the Chief Public Defender
- training coordinate would
  - -- coordinate statewide training
  - -- help establish standards
  - -- provide consultation and assistance with research for briefs
  - -- apply for and assists in disbursement of federal funds or other grant money
  - -- perform other duties as assigned

Section 11. Regional offices -- deputy public defenders -- office space.

This section provides that:

- if a regional office is established by the Commission (rather than having contracted services provided for in the region), then the regional office will be managed by a deputy public defender
  - -- there are PD offices in Missoula, Yellowstone, Bozeman, Anaconda-Deer Lodge, Cascade, and Lewis & Clark Counties and one FTE in Dawson County

Section 12. Contracted service program.

This section:

- authorizes the Office of State Public Defender and each regional deputy public defender to contract for services.
- contracting must be done fairly and consistently throughout the state and within each region.
- places specific parameters on the contracting to ensure:
  - -- that contracts consider attorney qualifications and caseloads
  - -- adequate contract oversight
  - -- contracts aren't awarded based solely on the lowest bid
  - -- that there will be no fixed rate contract (i.e. a set fee no matter the caseload handled).

Section 13. Public defender account.

This section provides that:

- all gifts, grants, or donations to the Office of State Public Defender would be deposited to a special revenue account
- all payments ordered by a court to pay for the cost of defense provided by a public defender would be deposited to the special revenue account

Section 14. Eligibility and determination of indigence.

This section describes the process to be used to determine whether a person is eligible for a public defender.

Under this section:

- the Office of State Public Defender (through the regional offices or through contracted services) will determine whether a person is indigent and eligible for a public defender, or not.

- subsection (3), which begins on page 15, line 4, provides that anyone with a household income at or less than 133% of federal poverty guidelines AND whose disposable income and assets are insufficient to retain competent counsel without substantial hardship will be determined "indigent" and eligible for a public defender.

- NOTE: the partial indigence language of subsection (5), page 15, beginning on line 12 was stricken by an amendment in Senate Judiciary. This raises an issue with the "and" on **page 15, line 8.** Leaving in "and" means that no one with an income higher than 133% of poverty could be determined eligible for a public defender. Changing "and" to "or" would allow for a person with an income higher than 133% of poverty to qualify for a public defender if their income and assets are insufficient to retain private counsel.

Section 15. Right to counsel.

This section concerns child abuse and neglect cases:
- consolidates current law and
- changes current law to provide that whenever a charge of child abuse or neglect is filed against a parent, the parent is immediately entitled to counsel (a court would no longer have to wait until a petition for the termination of parental rights has been filed)

Other key sections in the bill

Section 21. Amending 15-1-121. Entitlement share payment -- appropriation.

This section provides the funding mechanism for the Office of State Public Defender.

County and city share of funding: Beginning on **page 26, line 29 through page 32, line 29**, the amount of each county's and cities' entitlement share for FY 2006 will be reduced by the amount shown before the growth factor and entitlement share amount is calculated and paid out for FY 2007. This will permanently reduce the amount of the entitlement share paid to the county's and cities from the general fund.

Audit of certain counties: In order to base entitlement share reduction amounts for the state's largest counties on **actual costs** rather than on estimates, the bill provides that an audit will be conducted of certain county public defender expenses. **(See page 32, line 30, through page 33, line 3.)** The 6 counties to be audited are:
- Cascade
- Flathead
- Gallatin
- Lewis & Clark
- Missoula
- Yellowstone

The key language discussing how this audit will be conducted and identifying what expenses will be audited is provided in **Section 74, page 87, beginning on line 10.**

Section 48. Examination of defendant.

This section relates to mental examination of a defendant's fitness to proceed. Fitness to proceed may be raised by the prosecution, the defense, or the court. Key language to note is in **subsection (4), beginning on page 61, line 10.**

Section 63. Expense of trial for offenses committed in prison.

Current language:

- Dept. of Corrections pays all costs "incurred by the county" **(page 79, line 9)**

Issue:

- who should pay the costs for the prosecution, defense, and court expenses (such as for juries) in cases where the offense is committed in prison?
- NOTE: with the Public Defender Act in place, a county should not incur any public defender costs and therefore would not "invoice" the Department of Corrections. However, currently, the DOC is being billed by the counties for public defender costs in these cases.
- this section needs amending to further clarify the technicalities of who should pay for what

Implementation Sections

Section 70. Implementation

Time line:

Public Defender Commission appointed by	July 1, 2005
Chief Public Defender hired by	December 31, 2005
Standards and Procedures in place by	July 1, 2006

Section 71. Transition -- transfer of county and city employees to state employment

Local public defender staff become state employees	July 1, 2006

Section 72. Transition of appellate defender commission and office

Appellate Defender Commission and Public Defender Commission work together beginning	July 1, 2005
Office of Appellate Defender transferred to Office of State Public Defender and Appellate Defender Commission and old statutes repealed	July 1, 2006

Section 74. Determination of actual costs -- legislative audit

Audit of FY 2003 and FY 2004 "actual costs" for "public defender services" in district court and justice court in the following 5 counties:

- Cascade
- Flathead
- Lewis & Clark
- Missoula
- Yellowstone

Gallatin County just recently started their PD office so the audit will be only of the FY 2004 calendar year

"Actual costs" is defined on pg 88, beginning on line 11
"Public defender services" is defined on pg 88, beginning on line 14

Section 75. Interim report.

The Public Defender Commission and the Office of State Public Defender must provide a progress report in FY 2007 to:

- Governor
- Legislative Audit Committee
- Legislative Finance Committee
- Law and Justice Interim Committee
- Supreme Court

Section 80. Three-fifths vote required.

A three-fifths vote of the members of each house is required because the entitlement share statutes state that any adjustments to the entitlement share may be done only by a three-fifths vote.

Former County Employee Questions 25-Year-Sentence for Non-Violent Offense

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 9
DATE 3-8-05
BILL NO. SB 146

By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

David Lee Brown isn't saying he didn't do the crime. But, he is saying he shouldn't be doing so much time. For a non-violent offense regarding only property and not another person, a sentence of 25 years is too much.

"To get 25 years for theft is kind of ridiculous," Brown said. "I know a guy who shot a kid in the arm, that's pretty violent, he only got eight years and most of them were suspended."

Brown says that his public defender never took the time to go over his case, never put forward the defense Brown asked for, and never brought forward the witnesses Brown had that would have put Brown in a better light.

"Somebody who is charged with a crime, but just wants to get it behind them will plea bargain just to get out of jail," Ron Waterman, consulting attorney for the ACLU, said. "Here's somebody who felt desperate enough, he simply admitted to the crime. Typically, a plea bargain gives the defendant a sentence below the maximum. In this case, 25 years is pretty heavy."

Living in Polson, Brown was employed at the Lake County Courthouse as a maintenance worker. He'd been accused of taking $5,000 from a safe in the courthouse, but there wasn't enough evidence to press charges.

When an accusation of stealing school computers arose, Brown wanted to change the venue of his trial because he felt he wouldn't get a fair shake. "I knew the judge, I knew the prosecutor, and the court reporters, on a first name basis," Brown said. "So I thought it would be best if I got a change of venue. But, the public defender didn't even try. I thought he should have at least put a motion in, but he never did."

Brown met with his public defender, Ben Anciaux, a few times before the 2002 trial, and he was assured that his alibi witnesses would testify on his behalf. But his public defender did not contact them until the day before the trial.

"In fact, the witnesses had to track my public defender down at the courthouse," Brown said. "I wanted to assert my alibi defense, but he wouldn't let me. He didn't suppress evidence or anything."

While Anciaux was representing Brown, he was also running for county attorney, a race he lost.

While Brown was out on bond, he got arrested on another burglary charge. According to Waterman, in the eyes of others, Brown already had one strike against him.

"It's a slippery slope," Waterman said. "If you don't have adequate counsel that sense of hopelessness sets in and you may make some bad decisions."

Brown was given a different public defender, Larry Nistler.

"But Anciaux had the case so messed up, the prosecutor was unwilling to talk to us," Brown said. "They wanted me to plead guilty to that crime and the first crime at the courthouse."

Brown still wanted to take his case to trial, saying he wanted his day in court. But, Nistler advised him to plead guilty.

"I wanted to go to trial," Brown said. "But the day before the trial, Nistler said the alibis wouldn't work. He told me we should just plead guilty right now and see what we get. I didn't even have a plea bargain in place. I didn't really know what I should do. I was relying on his expertise."

Nistler told him that, if he were to take his case to trial, he'd get the maximum sentence of 30 years. But, if he pled guilty, he'd probably only get ten years.

"I felt like he and the prosecutor were teaming up on me," Brown said. "I felt like pleading guilty was my only option."

Instead of ten years, Brown was sentenced to 25 years imprisonment and is currently serving time at the Crossroads Correctional Center in Shelby.

Brown said he was just another case number, and not treated as a person with a life, feelings and rights. "It could have at least been argued," he said. "But now I can't appeal my case, because I pled guilty. I feel like I don't have any recourse."

To date, Brown has served two of his 25 years and is left with a bad taste in his mouth about the justice system. "The public defenders are there to help people, but they're just helping the county," Brown said. "They sure didn't help me."

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She can be contacted at: 406-388-4062 or mcorriel@imt.net.)

Ken Young Forced to Serve Time, Months After Being Ordered Released

By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

From the moment Ken Young was arrested and throughout his incarceration, all he thought about was his little girl.

"I was missing work and unable to support my little girl," Young said. "I was worried about her."

On September 20, 2002, Young was sent to prison for Driving Under the Influence (DUI) and a probation violation on a previous DUI. Over a year later he signed a plea agreement that covered all of his charges. He was to serve 13 months plus four years probation, under supervision of the Department of Corrections, with credit for time served.

Usually when someone is meant to go to jail, the arrest documentation reads "commitment to the Department of Corrections," not "supervision." When Young read the wording he asked his public defender, Margaret Borg, to clarify the sentencing.

"I did not hear a peep from her," Young said. "I wasn't fighting the sentence, I just wanted clarification on it. I wanted to know what [Missoula District] Judge Ed McLean meant by 'supervision.'"

Young wrote between 30 and 40 letters to Ms. Borg, as well as sending internal notes, known as "kites." But he felt as if his letters were going nowhere. Not only that but he was still worried about his daughter.

"She was only seven back then," Young said. "My ex-wife never sent me any of her letters and I was there a year before she even brought her in to see me."

Finally, on October 28, 2003, Young got the clarification he'd been waiting for. Judge McLean filed an amended judgment, with a handwritten note saying that all remaining time on Young's sentence would be suspended. Young should have been released immediately.

"But I had twelve days left on my 13-month sentence and they wouldn't let me go," Young said. "The next thing I knew I was taken from the Missoula County Detention Center to Great Falls Regional Prison. I couldn't call the Public Defender's Office because they don't accept collect calls so I called the ACLU in New York and told them what was going on."

"I sent Margaret [Borg] letters every day from jail, plus through the regular mail, even when I was in Great Falls," Young said. "I never got any response. I was disgusted. I was way passed anger. Everybody knew I was supposed to be out and there I was sitting in there. These people just throw you away and they don't care. Public defenders don't care. I felt helpless and disgusted. That's the way the system is, they're not going to help you, they just want to make a deal and be away with you."

After three weeks in Great Falls, Young was transferred to Montana State Prison, in Deer Lodge.

"There are people in Great Falls waiting for six months to go to prison and I was only there for three weeks when they shipped me off," Young said. "They were trying to shuffle me around, and put me where it's harder to get out."

In March 2004, four and a half months after the court officially released him, Young was finally freed from prison. He's currently thinking about a lawsuit, but the most important thing for him is that he's back with his daughter.

"I've been working in construction and I've gotten my little girl back," Young said. "I'm not drinking anymore. I've got to take care of my kid."

Bill Hooks, a Helena attorney and a former public defender said that, due to high caseloads, most public defenders have a hard time giving every client the time his or her case needs.

"It requires motivated people to go to work each day to do the best for those clients," Hooks said. "Many times there's an unwillingness to do that."

Hooks said, the way the system works now, there are many times a defendant can sit in jail for lengthy periods without hearing from his or her attorney.

"The result is a lack of confidence in the system," Hooks said. "People end up in prison who don't belong there, or they linger in jail for lengths of time inappropriate for their cases, if the cases had been properly explored or reviewed." But he added since the Constitution calls for effective counsel, "we should do everything we can to live up to that mandate."

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She worked for 10 years as a reporter and columnist for the ***High Country Independent Press***. She can be contacted at: 406-388-4062 or mcorriel@imt.net .)

'Lost File' Leads to Nearly a Year's Imprisonment

By Michele Corriel

Editor's Notes: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

The person in this story has asked that his real name not be used. Travis Hill is a fictional name, but all particulars of his case are true.

Travis Hill hit bottom. His life was a mess. He was already on probation when he got arrested again. Things were going from bad to worse.

When he got arrested in Missoula for theft, it also violated his probation terms in Polson, which sent him to the Lake County Jail. And Hill found himself in Catch-22. Because he was in jail in Lake County, he was not able to appear in Missoula County court to plead guilty to the new charges against him.

"I had a court date in Missoula to deal with the charges eight days after I was in jail," Hill said. "So I couldn't get the Missoula stuff taken care of because they wouldn't transport me to the Missoula County courthouse, while I was in jail in Polson."

Officials did, however, transport Hill to the Montana State Prison from Lake County, on the probation violation charge. And his charges in Missoula were still unanswered.

Hill wanted to plead guilty to the Missoula charges against him: Theft, no insurance, DUI and drug possession. He knew what he did and wanted a fresh start, to serve his time, and get into a rehab program. But that couldn't happen until he appeared in Missoula County court, where his pleas could be officially entered into the record. Until then he was stuck in limbo.

"I was guilty, I was caught red-handed," Hill said. "There was no question. I admitted it. I just wanted the court to say, 'Guilty,' slam the gavel down and sentence me. The simplest thing imaginable."

But Hill couldn't get his lawyer to answer a request for transportation to a Missoula court appearance. His original public defender, Nik Geranios, quit his job after filing initial paperwork. His replacement was Colleen Ambrose, who never contacted Hill. He didn't even know he had a new lawyer. Ambrose later said she lost Hill's file and that's why she never responded to him.

"That was not an excuse," Helena-based attorney Palmer Hoovestal stated, during his review of the case for ACLU of Montana. "The attorneys should at least have dictated a brief response. It is rarely, if ever, acceptable for a client to be unable to communicate with his lawyer for five months."

During early 2002, Hill wrote 13 letters to Ambrose and her supervisor.

"I started a weekly letter writing campaign," Hill said. "I verbally laid myself prostrate in front of her desk. I remember writing, 'Even a postcard from your janitor would make me happy beyond belief.'"

Hill just wanted to be eligible for some of the state programs offered at Deer Lodge, an impossibility because of an odd quirk in the law – due to pending charges that had not been answered, Hill could not apply for any of the programs offered by the state prison. Until he pled guilty to the charges he was persona non grata.

"It was excruciatingly frustrating," Hill said. "I couldn't do anything. It was supposed to be my attorney who was helping me, whom I had never met, spoken to, or corresponded with. She was supposed to be the person fighting for my freedom."

The e-mails from Ambrose show that she never met with Hill, nor had she even spoken to him. She was not aware that he was currently serving a sentence in Montana State Prison for his probation violation.

"This is absolutely unacceptable," Hoovestal stated. "Whether she could have done anything for him or not is beside the point. At a minimum, he should have been able to meet with his attorney before being sentenced."

After sitting for five months in prison, waiting to hear from his attorney, Hill finally wrote a letter to the American Civil Liberties Union of Montana, sending a copy to Ambrose.

"Within two weeks I had a response from Ambrose," Hill said.

Ironically, he spent no more than five minutes in front of the judge in Missoula and three months later, Hill was out on conditional release.

Hoovestal stated that Ambrose could have drafted a transportation order to get Hill to Missoula at any time from August of 2001 to June of 2002, but it was never even attempted. "[Hill] received deficient representation and that caused him harm."

"I'm back in college at the University of Montana, now doing well," Hill said, who is also working two jobs. "It made me a little bitter, but I'm getting over that. I was lucky. When you're sitting in a jail cell, all you can think about is your freedom and everyone forgets you're there. You're only a name and a number, yet your heart and brain are in a jail cell -- waiting."

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Man Held Without Trial for Nearly Two Years

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

By Michele Corriel

Jack Kottre lost nearly two years of his life inside a Missoula county jail. His 23-month spiral down into the depths of despair was the result of a broken justice system.

"I don't even know how to describe it," Kottre said. "I didn't have anybody to help me."

Arrested on May 4, 2002, for a felony DUI, Kottre was assigned a public defender. Unfortunately, for Kottre, his public defender didn't want anything to do with him or his case.

"The public defender was pretty much saying that he had somebody breathing down his neck," Kottre said. "He just kept telling me to plead guilty. And I wasn't guilty."

Kottre had been pulled over because of a supposed parole violation, when in fact, his parole period had expired. "I'd had a few beers," he admitted, "but I wasn't intoxicated and I wasn't going to plead guilty. I wanted my day in court."

But that day wasn't to come for a long time.

Thirteen months after Kottre's arrest with Kottre still in jail, his attorney took himself off the case. That's when the chief public defender took it over.

According to Montana state statute, the maximum amount of time a judge can sentence a person for a felony DUI is 13 months in jail. Kottre had already served that before he even got to see a judge.

It took another six months before the chief public defender came to talk to Kottre about his case.

"When she finally did come to see me she said, 'Jack, why don't you just plead guilty?' And I said, 'Why don't you get the hell out of here.' I was so depressed," Kottre said. "Nobody was hearing me. I tried to fire my attorneys all the time I was in there. It was a joke. I felt helpless. This is the United States, not some foreign country."

The Sixth Amendment of the U.S. Constitution guarantees citizens rights to a speedy and public trial, an impartial jury, and to have the assistance of counsel for his defense. The Fourteen Amendment guarantees due process. Both of these amendments were disregarded in Kottre's case.

Ron Waterman, cooperating attorney with the American Civil Liberties Union, explained that most speedy trial violations, as it pertains to the Sixth Amendment, happen to those people who cannot afford to hire their own attorneys.

"A speedy trial problem means you don't have competent counsel," Waterman said. "Competent counsels will deal with their clients in a professional and expedient manner. In this case, Jack Kottre was assigned an attorney."

Waterman said the problem with the lack of a speedy trial is that it allows the prosecution to incarcerate people without a conviction.

"What we're doing is presenting to America something that we usually think of as a Third World problem," Waterman said. "We are giving the prosecution the power to imprison a person without necessarily having any evidence to support the accusations. This fellow is taken off the streets, away from his family, accused of a crime but the accusation was never tested. They never proved anything and he lost two years. That could be you or me."

This type of constitutional violation most affects only a certain portion the population – people with limited funds, Waterman said.

"It's every poor person's concern -- arrested with a crime, incarcerated and rotting in jail until the authorities let you go," Waterman said. "As a society it has to be our concern. Certain people are being exposed to the potential that their freedom will be taken from them without proof of guilt. It weakens the fabric our society. This issue deals with the idea that there are two systems of justice – one if you have the money and another if you don't."

Although Missoula is one of the few counties that have a public defender's office, its caseloads are so huge that the office was ineffectual in protecting Kottre's rights.

In frustration, Kottre tried representing himself, but the judge would not allow it. Finally, Kottre decided to just plead "nolo contendre," which means, "I do not contest," a plea that implies a guilty plea, but is not technically an admission of guilt.

"I told the court that I wanted to leave my case open, on the grounds that I wanted to appeal my speedy trial rights, and on unlawful incarceration," Kottre said.

On April 24, 2004, all the charges against Kottre were dismissed.

Kottre's unlawful incarceration case is pending.

"I'm still stressed out over it," he said of his 23-month-long unconstitutional detention. "I'm not suicidal or anything, but it'll bother me for a while."

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She can be contacted at: 406-388-4062 or mcorriel@imt.net .)

Incompetent Counsel Leads to 40-Year Sentences for Innocent Man

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

By Michele Corriel

Because of an incompetent attorney, Jimmy Ray Bromgard was sentenced to 40 years in the Montana State Prison for a crime he didn't commit.

Bromgard, only 17, was under detention in Billings for fighting in school when he was placed in a police lineup 18 years ago. The next the thing he knew a judge was handing him a 40-year sentence for raping an eight-year-old girl. He spent over 15 years in state prison, trying to reclaim his freedom.

Thanks to the New York-based Innocence Project, a non-profit organization fighting to reverse wrongful convictions, Bromgard has been acquitted. But the problems that put him behind bars still exist.

At the trial, the prosecution offered a piece of hair as evidence, determined by the Montana State Crime Laboratory (now called Montana State Forensic Sciences Division) to be Bromgard's. According to court testimony, Arnold Melnikoff, then-director of the Montana State Crime Lab, told the jury that the hair found on the victim's sheets had a one-in-10,000 chance of not coming from Bromgard. He added that, combined with the pubic hair found in the sheets, there was a one-in-100,000 chance they had both *not* come from Bromgard.

"More or less, he told the jury I had to be the guy that did it," Bromgard said.

Experts who examined the court case say there are no probable or accurate statistics when it comes to matching hair samples, a practice commonly referred to as "junk science."

The other strike against Bromgard was his attorney, nicknamed "Jailhouse John" Adams, according to the Innocence Project report, because his clients ended up in jail.

"He showed up [to the trial] with an empty notepad," Bromgard said. "He made no opening statements. The only witnesses he called on my behalf were my stepfather and my mother, because they were already in the courtroom."

Bromgard's court-appointed attorney took little time with his case, mounted practically no defense, and was not prepared to deal with the magnitude of the crime. The jury deliberated for only one hour and came back with a guilty verdict.

The court sentenced Bromgard to three consecutive 40-year prison terms at the state prison.

"They put me in general population (at the prison)," Bromgard said. "That's where I got my jaw broken for being a child molester."

After that, Bromgard spent 23 hours a day in solitary confinement.

It wasn't just that Bromgard was innocent; his civil rights were violated, according to those who have investigated his case. The right to a "guiding hand of counsel," was granted in 1963 with the U.S. Supreme Court decision, *Gideon v.*

Wainwright. That translates into a right to have an attorney who works in the client's best interests at all times.

"Our mission is to provide the effective assistance of counsel as dictated by *Gideon v. Wainwright*, and all of the subsequent court decisions," Penny Strong, current Chief Public Defender for Yellowstone County, said recently. Strong was not yet a public defender at the time of the Bromgard case (1987).

During Bromgard's trial, the eight-year-old victim was unable to identify him. At the time of the line up, although the girl picked Bromgard out, she was not sure he was the right man. After the girl was shown the video of the line up, she said she was only "60-to-65 percent sure." When asked at the trial she stated, "I am not too sure." But she still identified him in court as her assailant.

Bromgard's counsel never objected.

Aside from the hair samples, the only other evidence used at trial was a checkbook from the victim's home found near Bromgard's home, not far from the crime scene. However, Bromgard's fingerprints were not at the crime scene or on the checkbook.

DNA testing, performed at the request of the Innocence Project, found semen from the victim's underwear did not match Bromgard's DNA.

"His attorney did no investigation, hired no expert to debunk the state's forensic expert, filed no motions to suppress the identification from a young girl who was, according to her testimony, at best only 65 percent certain, gave no opening statement, did not prepare a closing statement, and failed to file an appeal after Bromgard's conviction," states the Innocence Project report on Bromgard's case.

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(For further information on the Innocence Project, check their website at www.innocenceproject.org. They have exonerated 154 people to date.)

(For detailed information on *Gideon v. Wainwright* see the National Legal Aid & Defender Association's website at: http://www.nlada.org/Defender/Defender/Defender_Gideon/Defender_Gideon_40.)

EXHIBIT NO. 10
DATE 3-8-05
FILE NO. SB146

HEALTH AND HUMAN SERVICES 2002 POVERTY GUIDELINES

BY FAMILY SIZE AND ANNUAL INCOME

COMPARES THE 250% AND 150% STANDARD

FOR BOTH ANNUAL AND MONTHLY INCOME.

Table A-1

Federal Poverty Guidelines[1]

Family Size	Poverty Index	150%		250%	
		Annual	Monthly	Annual	Monthly
1	$8,860	$13,290	$1,107.50	$22,150	$1,845.83
2	$11,940	$17,910	$1,492.50	$29,850	$2,487.50
3	$15,020	$22,530	$1,877.50	$37,550	$3,129.17
4	$18,100	$27,150	$2,262.50	$45,250	$3,770.83
5	$21,180	$31,770	$2,647.50	$52,950	$4,412.50
6	$24,260	$36,390	$3,032.50	$60,650	$5,054.17

[1] *Federal Register*, Vol. 67, No. 31, February 14, 2002, pp. 6,931-6,933. For each additional household member, add $3,080.

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 11
DATE 3-8-05
SB NO. SB146

SENATE BILL 146 RECALCULATION OF CITY ALLOCATION

	COLUMN 1			COLUMN 2			COLUMN 3		
Alberton	~~$614~~	$675	Grass Range	~~$231~~	$254	Scobey	~~$1,636~~	$1,798
Bainville	~~$234~~	$258	Great Falls	~~$87,731~~	$96,422	Shelby	~~$5,165~~	$5,677
Baker	~~$2,573~~	$2,828	Hamilton	~~$6,504~~	$7,148	Sheridan	~~$1,047~~	$1,150
Bearcreek	~~$130~~	$143	Hardin	~~$5,387~~	$5,920	Sidney	~~$7,049~~	$7,747
Belgrade	~~$10,649~~	$11,704	Harlem	~~$1,294~~	$1,422	Stanford	~~$670~~	$737
Belt	~~$961~~	$1,056	Harlowton	~~$1,526~~	$1,678	Stevensville	~~$2,787~~	$3,063
Big Sandy	~~$1,028~~	$1,130	Havre	~~$14,761~~	$16,223	St. Ignatius	~~$1,244~~	$1,367
Big Timber	~~$2,648~~	$2,910	Helena	~~$41,742~~	$45,877	Sunburst	~~$645~~	$709
Billings	~~$148,763~~	$163,499	Hingham	~~$239~~	$263	Superior	~~$1,384~~	$1,521
Boulder	~~$2,129~~	$2,340	Hobson	~~$361~~	$397	Terry	~~$920~~	$1,011
Bozeman	~~$48,046~~	$52,805	Hot Springs	~~$830~~	$912	Thompson Falls	~~$2,067~~	$2,272
Bridger	~~$1,186~~	$1,303	Hysham	~~$439~~	$482	Three Forks	~~$2,848~~	$3,130
Broadus	~~$697~~	$766	Ismay	~~$39~~	$43	Townsend	~~$2,990~~	$3,286
Broadview	~~$234~~	$258	Joliet	~~$916~~	$1,006	Troy	~~$1,505~~	$1,654
Brockton	~~$377~~	$414	Jordan	~~$551~~	$606	Twin Bridges	~~$633~~	$695
Browning	~~$1,665~~	$1,830	Judith Gap	~~$239~~	$263	Valier	~~$744~~	$817
Cascade	~~$1,250~~	$1,374	Kalispell	~~$25,608~~	$28,144	Virginia City	~~$203~~	$223
Chester	~~$1,301~~	$1,430	Kevin	~~$277~~	$304	Walkerville	~~$1,076~~	$1,183
Chinook	~~$2,070~~	$2,275	Laurel	~~$9,830~~	$10,804	West Yellowstone	~~$1,896~~	$2,083
Choteau	~~$2,775~~	$3,050	Lavina	~~$328~~	$361	Westby	~~$239~~	$263
Circle	~~$926~~	$1,018	Lewistown	~~$9,254~~	$10,170	White Sulphur	~~$1,578~~	$1,734
Clyde Park	~~$520~~	$572	Libby	~~$4,071~~	$4,475	Whitefish	~~$8,036~~	$9,932
Colstrip	~~$3,721~~	$4,090	Lima	~~$361~~	$397	Whitehall	~~$1,719~~	$1,889
Columbia Fall	~~$6,191~~	$6,805	Livingston	~~$11,060~~	$12,145	Wibaux	~~$812~~	$893
Columbus	~~$2,963~~	$3,245	Lodge Grass	~~$809~~	$889	Winifred	~~$236~~	$259
Conrad	~~$4,161~~	$4,562	Malta	~~$3,084~~	$3,389	Winnet	~~$286~~	$314
Culbertson	~~$1,106~~	$1,216	Manhattan	~~$2,261~~	$2,485	Wolf Point	~~$4,092~~	$4,497
Cut Bank	~~$4,837~~	$5,316	Medicine Lake	~~$373~~	$410			
Darby	~~$1,226~~	$1,348	Melstone	~~$212~~	$234	Column 3	~~$54,506~~	$59,905
Deer Lodge	~~$5,193~~	$5,708	Miles City	~~$12,877~~	$14,152	Column 2	~~$366,124~~	$402,391
Denton	~~$458~~	$503	Missoula	~~$94,866~~	$104,264	Column 1	~~$296,048~~	$325,374
Dillon	~~$6,304~~	$6,928	Moore	~~$291~~	$319	Total Cities	~~$716,678~~	$787,670
Dodson	~~$177~~	$194	Nashua	~~$487~~	$536			
Drummond	~~$511~~	$561	Neihart	~~$136~~	$149	Anaconda-DL	~~$30,735~~	$20,707
Dutton	~~$601~~	$661	Opheim	~~$164~~	$180	Butte-SB	~~$113,999~~	$53,057
East Helena	~~$2,628~~	$2,888	Outlook	~~$114~~	$125	Total Cons	~~$144,734~~	$73,764
Ekalaka	~~$626~~	$689	Phillipsburg	~~$1,467~~	$1,612			
Ennis	~~$1,381~~	$1,518	Pinesdale	~~$1,286~~	$1,413			
Eureka	~~$1,676~~	$1,733	Plains	~~$1,826~~	$2,007			
Fairfield	~~$1,019~~	$1,120	Plentywood	~~$2,898~~	$3,185	**Total Cities**		
Fairview	~~$1,048~~	$1,152	Plevna	~~$205~~	$225	**and Consolidated**	**~~$861,412~~**	**$861,434**
Flaxville	~~$130~~	$143	Polson	~~$7,026~~	$7,722	*****Rounding Difference		-$23
Forsyth	~~$2,990~~	$3,286	Poplar	~~$1,405~~	$1,544			
Fort Benton	~~$2,347~~	$2,579	Red Lodge	~~$3,551~~	$3,903			
Fort Peck	~~$358~~	$393	Rexford	~~$239~~	$263			
Froid	~~$298~~	$328	Richey	~~$281~~	$309			
Fromberg	~~$778~~	$855	Ronan	~~$2,968~~	$3,262			
Geraldine	~~$416~~	$457	Roundup	~~$2,984~~	$3,280			
Glasgow	~~$4,878~~	$5,361	Ryegate	~~$423~~	$465			
Glendive	~~$7,369~~	$8,099	Saco	~~$322~~	$354			
Total Column	~~$296,048~~	$325,374	Total Column 2	~~$366,124~~	$402,391			

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

FINANCE AND CLAIMS

DATE 3-8-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MIKE COONEY (D), CHAIRMAN	✓		
SEN. TRUDI SCHMIDT (D), VICE CHAIRWOMAN	✓		
SEN. KEITH BALES (R)	✓		
SEN. GREGORY BARKUS (R)	✓		
SEN. JOHN BRUEGGEMAN (R)	✓		
SEN. JOHN COBB (R)	✓		
SEN. JOHN ESP (R)	✓		
SEN. STEVE GALLUS (D)	✓		
SEN. KEN HANSEN (D)	✓		
SEN. BOB HAWKS (D)	✓		
SEN. BOB KEENAN (R)			✓
SEN. RICK LAIBLE (R)	✓		
SEN. LANE LARSON (D)	✓		
SEN. GREG LIND (D)	✓		
SEN. DON RYAN (D)			✓
SEN. COREY STAPLETON (R)	✓		
SEN. JON TESTER (D)			✓
SEN. DAN WEINBERG (D)	✓		
SEN. CAROL WILLIAMS (D)	✓		
TARYN PURDY, LSD	✓		
PRUDENCE GILDROY, COMMITTEE SECRETARY	✓		

MONTANA STATE SENATE
2005 LEGISLATURE

VISITOR REGISTER

FINANCE AND CLAIMS

DATE MARCH 8, 2005 **BILLS BEING HEARD TODAY** SB 439. SB 491

SB 493 SB 484 SB 146

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Jim KEMBEL	439-6791	MT ASSOC. OF CHIEFS OF POLICE	SB 146	X	
ANDY POOLE	841-2707	DEPT OF COMMERCE	HB493	∞	
Harry Payne	447 8405	City of Helena	HB484		X
" "	"	" "	HB 491		X
Mike O'Connor	444-5459	Retirement Admin	SB 439	X	
" "	" "		SB 484		X
Mike McGrath	444-2026	Attorney General	SB146	X	
Michael C. Hartman	543-2768	Parent	SB146	X	
Linda Matthews-Julian	721-4342	MT Families	SB146	X	
Rev DAVID L PAUL	777-2523	MT FAMILIES	SB 146	✓	
Jerry Loach	443-3525	SMA	SB 146		X
John Sempf	443-7467	MT Fire Alliance	SB 439		
Melanie Symons	444-9174	MPEA	SB 491	✓	
Frank Cote	3-9070	MSE	~~HB493~~	X	
Pat Climer	431-6640	MSCFFF	SB 439, 484	X	
KEITH SIMENDINGER	461-0707	MSFA	439, 484, 491	X	
KURT SUSHAKEL	461-0707	MSFA	439, 484, 491	X	
Jacqueline Lynnak	2-0230	ACLU	SB 146	X	
Rob Waterman	442-8868	Self	SB 146	X	
SCOTT CRICHTON	443 8590	ACLU	SB 146	X	
Jami McCall		City of Billings	SB 146	X	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA STATE SENATE
2005 LEGISLATURE

VISITOR REGISTER

FINANCE AND CLAIMS

DATE March 8, 2005 **BILLS BEING HEARD TODAY** _____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Gordon Morris		MACo	SB 146	✓	
LINDA STOLL		MISSOULA COUNTY	SB 146	✓	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Hello Prudy,

I forgot to sign in yesterday @ S.B. 146. Can you put me on the list?

Thank You,

Betsy Brandborg
State Bar of Montana
444-2205
Support SB 146

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on March 18, 2005 at 8:00 A.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Ken (Kim) Hansen (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 44, 3/4/2005; SB 477, 3/10/2005
Executive Action: HB 44; SB 146

a problem using the federal formula. The problem Missoula County has is the unilateral ability of the state of Montana to cut payments to local entities when the state of Montana has fiscal difficulties. These costs are incurred, and the costs must be paid for. If the state does not live up to its obligation, then the county must; then the county taxpayer foots the bill. The solution that Missoula County wants is to fix a formula in rule that is enforceable and contractual. The Department's response is typical of the response of someone who takes a stance on something, and then looks for rationale to back up that stance. The Department's response is to cloud the issue. The question is if the Department is getting good value from the local facilities, and are the local facilities doing what they are supposed to do. It is the responsibility of the Department to see that is done. If they feel that is not being done, then they should bring their concerns to the Legislative Audit Committee. The issue is not whether or not they are receiving good value for what they are paying; the issue is they are not paying what they have agreed to pay. Putting the onus on the counties clouds the question, makes the question more complex, the issue more complex, and the issue is not that complex, he contended. Individual state agencies, under state law, are required to cover the actual costs of what they do. The issue is of consequence to the taxpayers of Missoula, Dawson, and Cascade Counties. They are asking for consistency and predictability in per diem payments from the state of Montana to the local facilities.

EXECUTIVE ACTION ON HB 44

{Tape: 2; Side: A; Approx. Time Counter: 22.2}

Motion/Vote: SEN. LAIBLE moved that HB 44 BE CONCURRED IN. Motion carried unanimously by voice vote.

SEN. SCHMIDT will carry the bill on the floor.

EXECUTIVE ACTION ON SB 146

{Tape: 2; Side: A; Approx. Time Counter: 23.0}

Taryn Purdy, Legislative Fiscal Division, explained there were two primary things that changed since the presentation by **SEN. MCGEE** last week. The first with psychiatric examination costs. The version of the bill that was presented did not include several of the large counties--Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, and Yellowstone. They were to be the subject of an audit to take place over two years. The results of

that audit were to be used to determine how much they owed of the cost of the assumption of the public defender program. Those counties are now included in the bill. There will still be an audit, and if any adjustments are necessary as a result of that audit, then legislation will be requested next biennium. Regarding the psychiatric evaluations, currently there can be a request for a person to be evaluated to determine whether or not they are fit to proceed to trial. This evaluation can take up to 60 days. Currently, if the person is indigent, or if the request for evaluation is made either by the prosecution or by the district court itself, the state is responsible for all of the costs of evaluation. The counties are responsible for the costs that are incidental to that, such as transportation, medicine, room and board, etc. For indigent persons, the cost shifts to the Public Defender's office from the Supreme Court Administrator. The incidental costs that are now paid by the county will be paid by the state. This is an increase in costs to the state beyond what was presented previously. They do not know what those costs are. In the audit section of the bill, Section 72, an examination of those costs has been added to the scope of the audit.

{Tape: 2; Side: B}

SEN. JOHN ESP asked who would pay for the psychological evaluations. **Ms. Purdy** said, for indigent persons, the costs are paid currently by the Court Administrator. Incidental costs, such as transportation and room and board, are paid by the counties. Under this bill, those evaluation costs would be paid by the Public Defender's office. In addition, incidental costs would be paid by the state as well. If the evaluation is requested by the prosecution or the district court for someone who is not indigent, it would be paid by the Supreme Court Administrator.

Jacqueline Lenmark, ACLU, further clarified that the amendments to the bill propose that if the evaluation is requested by the court, the court administrator will pay. If the evaluation is requested by the prosecution, the court administrator will pay. If the evaluation is requested by defense counsel, and the defendant is indigent, the Public Defender program will pay. Evaluations are sometimes requested jointly by the prosecution and the defense, and in that instance the cost would be divided equally between the Court Administrator and the Public Defender's office. **SEN. ESP** asked who pays if the evaluation is requested by the defense, and the defendant is not indigent. **Ms. Lenmark** advised the defendant would pay. **SEN. ESP** asked about the rationale for the court paying if the county attorney makes the request. **Ms. Lenmark** indicated the rationale is that the

defendant and defense counsel did not believe the evaluation was necessary, and the prosecution did. It is an accounting mechanism. If the prosecution has made the request for incurring that expense, then the expense will be paid for and accounted for on the prosecution's side of the case. If the request was made by defense counsel, the expense would be borne on the defense side of the case. **SEN. ESP** said he failed to see the connection between the court and the prosecution. He thought they were trying to separate the defense from the court, and wondered why they were wrapping some prosecution functions with the court. **Ms. Lenmark** declared that, currently, the Court Administrator is picking up all of those costs if the court orders the evaluation, the prosecution makes the request, or the public defender under the current program makes the request for the evaluation. The incidental expenses are picked up by the counties, currently. This amendment would move all of the expenses to the state and allocate them based on who requested or ordered the evaluation.

Testimony was briefly interrupted by a visit from school children bringing treats)

SEN. COBB asked about line 27, page 87 of the bill; if 50% of the cost of the audit is borne by the county, he wondered who pays the other 50%. **SEN. MCGEE** replied, the state. **SEN. COBB** asked why. **SEN. MCGEE** said it was a deal. **SEN. COBB** asked if they take that out, if it will break the bill. He asked about the cost of the audit. **SEN. MCGEE** thought it could be $40,000 or $50,000, but he did not know. **SEN. COBB** said, if this passes, the Legislative Auditor would have to eat the costs, and **SEN. MCGEE** said, that is correct.

SEN. RYAN asked if there is a possibility in this bill to be indigent in one county and not indigent in another. **SEN. MCGEE** did not think so, because it is 130% of the federal poverty level.

SEN. GALLUS asked if there is a ballpark cost for the amendment. **Harry Freeborn, Legislative Fiscal Division**, replied, the budget office does not have a number.

SEN. LIND asked **Ms. Stoll** to comment on the entitlement share payment section of the bill and the amendments specific to Missoula County. **Ms. Stoll** said, for the purposes of taking over the Public Defender portion of Justice Court, Missoula County would gladly give up its budget of $150,000 a year. The entitlement share proposal is $310,000 and $195,000 from Missoula County. With respect to the amendment and the discussions about the cost of the amendment, she reminded the committee of her previous testimony that the counties, for the most part, believe

that those costs were included in SB 176. The counties sent nearly $25 million to the state to take over the function of district courts; $18 million of that was through the entitlement fund, and $7 million was through motor vehicle money. In the 2003 session, the Legislature decided to change the way motor vehicles were taxed, and went to a flat tax. The Legislature made the decision to reduce the amount of revenue that otherwise was going to fund district courts. In terms of the cost of the amendment, for those associated costs of fitness to proceed, she suggested contacting the state hospital to determine room and board costs, and then figure out transportation.

SEN. COREY STAPLETON asked **SEN. MCGEE** to respond. **SEN. MCGEE** said. in the bill as first presented to the committee, they had identified the six major counties, had taken a number value out of the bill, and substituted a provision for an audit to determine the actual costs for those six counties so they would know how much to withhold from the state entitlement share. They were looking at justice courts and any un-reimbursed district court costs. The problem came up with regard to the funding of associated costs of psychiatric evaluations. There are two sections of code where a person can be given a psychiatric evaluation to determine fitness to proceed. If they are not fit to proceed, they go to Warm Springs. They did not know if that was a legitimate state cost, or if it was something the counties had traditionally paid for. Estimates of that cost were from $200,000 to $1.4 million. The audit provision stated that, based on the audit, the entitlement share would be reduced by the amount determined by the audit. This required the Audit Division to be the judge and jury with regard to those costs, and to send the bill to the counties. If the counties disputed those costs, the Audit Division would have to adjudicate all this. It became clear that it was probably not appropriate to do the audit for purposes of funding in the 2007 fiscal year. They decided to reinstate numeric values for the withholding from entitlement share for justice courts and for un-reimbursed public defender related district court costs. The number out of Missoula County for justice courts is $152,000 and some change. Added to this were their un-reimbursed district court costs. It seemed appropriate to have the audit division look at 1998 through 2004. No one can say what the absolute number ought to be.

SEN. STAPLETON asked if **SEN. MCGEE** supports the bill as amended, and who is playing the devil's advocate and putting the breaks on. **SEN. MCGEE** said he would not bring forward a bill that was completely open-ended. In two years, once the audit is completed, they will know the public defender costs at the justice court level and the district court level. **SEN. STAPLETON** said that would be taking a leap of faith and making a massive

policy change two years in advance of knowing. He asked what **SEN. MCGEE** sees after the first year. **SEN. MCGEE** said he did not think it would be as high as $3.8 million. There are a lot of start-up costs. Currently, they spend between $8 million and $10 million per year on public defender work; some of that is being paid by counties and some by the state. What is not being expended, and what this bill requires, is whatever the number is for the first year and $3.8 million in the second year. By that time, the Commission is in position, they have hired the Public Defender, and the Public Defender is hiring the associated staff, setting up the regions, etc. He thought things will settle down after the second year. His guess was they would see another $2 million added on in upcoming bienniums. **SEN. MCGEE** asked if **SEN. MCGEE** was convinced this was the way to go. **SEN. MCGEE** advised as they went forward through this entire process, his default setting was if they were not sure--include it. They created a Rolls Royce. He did not think a Rolls Royce would be absolutely necessary to satisfy the suit situation. He believed they could go forward with unified standards of procedures and practices, training, etc., to satisfy issues of the suit without going to this extent.

{Tape: 3; Side: A}

SEN. STAPLETON did not see anybody driving the bus that was giving the option of going with a Chevy. He asked how they could have something to compare to that is not the Cadillac. **SEN. MCGEE** said they do not know what they need to know to decide certain things. They need uniform standards, training, and a certain level of competence to insure adequate, effective assistance of counsel. It seemed to make the most sense to incorporate the municipal courts, justice courts, district courts, and to fund all those entities appropriately. The monies are already being spent by either the counties, at the justice court level or the cities at the city court level. The state will capture about ten million from the entitlement share. The cost of the Chief Public Defender, Deputy Public Defenders, training, etc., is $900,000 the first year and $3.8 million in the second year. It is in the second year that the Chief Public Defender's office gets created. After the audit, they will have some real numbers. They may decide they do not need to include justice courts. for example. In every decision they made, they defaulted toward the people of Montana.

SEN. SCHMIDT asked **Scott Crichton, ACLU**, asked what was needed to satisfy the suit situation and about the comment that this will settle down after the second year. **Mr. Crichton** said, in terms of it settling down after two years, that is true. For the first time. there will be an accounting of what it costs to administer

a good share of the criminal justice system in a centralized way. He imagined that in four years, it will also still be settling down. If this bill passes both Houses as amended, the first year will be setting up the commission, recruiting talent to head up the Public Defender office, to staff it, and to set up a system and technology for centralized delivery of a public defender system. They will not see the beginning of the delivery of services until the second year of this biennium. By the time the Legislature meets, there will have been six months of operation. They will know how good of a job the Commission has done in its recruiting and what this will translate into in terms of services provided. Determining the costs that are expended in the system and the savings that will be achieved in other parts of the system will take a couple of sessions to sort through. He referred to testimony about someone incarcerated for 18 months before going to court. That sort of backlog can cost a county $20,000. He thought there would be savings and this may reduce the prison population if public defender caseloads are reasonable. The numbers put together by staff are based on the best estimates of current expenditures which are not uniformly accounted for. There are some projections about the cost of setting up the system. It is difficult to forecast the cost of the system when the caseloads are not known. A public defender should not have more than 200 cases a year by national standards. The number of cases is also impacted by what laws are passed. Many things could happen by adequately funding the system. The litigation they put on hold was brought forward on behalf of people who were felons or people accused of felonies or misdemeanors who could end up in the deprivation of their liberty. That was the extent of the lawsuit. It was clear that, in order to address inadequacies in public defense, it needed to include juveniles and families that were involved in abuse and neglect cases. The state has lost federal money by not having timely representation of those abuse and neglect cases. The Interim Law and Justice Committee looked at problems facing the state in the interim, but because other committees looked at this bill it was suggested the bill be expanded. Those other elements can be cut out, but then one part of the population would be served by recognized standards and the others who would not. **SEN. MCGEE** and the committee saw it would be better to craft a system, rather than trying to patchwork solutions mandated by litigation.

Motion: SEN. RYAN moved that SB 146 DO PASS.

Motion: SEN. RYAN moved that SB01617.AVL BE ADOPTED.

EXHIBIT(fcs60a02)

Discussion:

SEN. SCHMIDT asked if this is a pragmatic approach or if this is a Cadillac version. **Mr. Crichton** thought it was more like a Buick. He thought it was a good deal. Other jurisdictions in the country use 250% of poverty, and that may be closer to a Cadillac. It is like buying tires that will get them down the road, or buying the cheapest tires available and hoping that they last until the next biennium. The chassis is there and now they are talking about moving it.

SEN. LIND wondered if there was a way, as the audit goes forward, to make the process a little more dynamic so if there is excessive cost allocated to particular counties, that could be corrected prior to the next Legislative session. **Ms. Stoll** replied, no. **SEN. MCGEE** thought there was no way in the middle of the audit. One of the things they were trying to do with the extension of the time period for the audit, was to make sure that the Legislature was the one that did the analysis rather than leaving it up to the Audit Division. The audit provision, with the amendment, will come back to the Legislature and they will decide what are legitimate costs.

SEN. LAIBLE said there was a number that has come up as a result of the amendment, because the entitlements have changed. He asked where the numbers came from. **SEN. MCGEE** advised they came from the counties. The Montana Association of Counties (MACo) did the original research. The interim committee made additional phone calls to counties. The number for Missoula County combines what was reported for public defender costs and un-reimbursed district court costs. There has been confusion over what should have been paid or should not have been paid from the state assumption of district court costs. There have been decisions made at the District Court Council level not to pay certain things. It has been very confusing to counties. They are not trying to fix everything regarding that issue in the Public Defender Act. He thought the counties have a legitimate argument that there should be other costs that should be paid with the assumption of district courts. The numbers have been provided by six counties. They include justice court public defense costs and un-reimbursed district court costs. **SEN. LAIBLE** said this includes different numbers for each community and raises the amounts that will be subtracted for their entitlements. He asked if that was done on a formula basis, or if these changes were a result of the amendment or from the communities. **SEN. MCGEE** advised the League of Cities and Towns went to the cities and towns to find public defense costs. It was decided to apportion that value according to population. There was a double hit to Anaconda/Deer Lodge and Butte/Silverbow because they are unified

city/county. The city component had to be taken out and reallocated based on population for the other cities and towns throughout the state, but not including Anaconda/Deer Lodge and Butte/Silver Bow. That is the reason for the individual city amounts. He added that the fiscal note will change with these amendments; the fiscal note will go down $1 million because that amount will be withheld from the entitlement. Instead of $3.8 million it will be about $2.7 million.

SEN. STAPLETON asked **Ms. Lenmark** about her previous testimony regarding the funding. He asked what will happen in the out years. **Ms. Lenmark** believed the bill will resolve litigation that is infinitely costly to the state. If the ACLU were to prevail in that litigation, there would be an exploding cost. With the Public Defender Program as proposed in the bill, she believed that there will be no exploding cost. They will see a continued refinement through competent statewide management of a system that has no cohesion right now. There will be savings as a result of that. The Department of Justice believes there will be significant economies realized by putting together this comprehensive, standardized, statewide program. She thought there would be good information from the audit that will allow the Legislature to make better informed decisions in two years about what costs actually are associated with public defenders and what costs are not. It will allow them to make some further judgments. She believed there will be some startup costs. There is a difference of opinion between her client and the Department of Justice about what those costs are. She thought they had bracketed them and they are committed to economize in every way possible while still meeting the constitutional standards that Montana is obligated to meet. She said she was uncomfortable with the analogy to a Rolls Royce, a Cadillac, or to any vehicle. She thought the bill was the most carefully thought out, comprehensive framework to put into place a critical management tool for this state to meet state and U.S. constitutional standards for the defense of indigent citizens. **SEN. STAPLETON** said if she was uncomfortable with the analogies they were using, he said it was because nobody had given anything but anecdotal reasons to do this. He thought proponents made a dangerous mistake early in the Legislative process of assuming this is a foregone conclusion and will automatically become law. He was uncomfortable with phrases like "very significant", "infinitely", and "exploding". They are asked to make major decisions on policy absent anybody taking responsibility for laying out numbers just hundreds of days beyond the court assumption debacle which made them all look silly. They were off by an eight digit number.

{Tape: 3; Side: B}

They already assume SB 146 has met the muster, has gotten the votes, is in law, and they can take this time to figure out the numbers as they go. He said the process is not set up that way. They have to make informed decisions, especially on this committee, based on something more than anecdotal assumptions of what might, or could be, for varying car types. **Ms. Lenmark** responded that no assumptions have been made. She said he was exactly right about the process and where they were in the process. The numbers that have been put together painstakingly over the interim by the legislative staff and by the Governor's budget office are the numbers they are working with. Those are the known numbers, and they are endeavoring to get more specificity and certainty for those numbers. She thought the fiscal note reflects that. She urged the committee to consider that much of the money that is going to support this program is already being spent by other agencies towards this function. There will be a transfer of that money from one agency to another, and from one method of accounting for that money to another. **SEN. STAPLETON** asked if that could be provided to the committee so they can make decisions based on what is available. **Ms. Lenmark** was not certain what this committee would regard as user friendly. If the information in the fiscal note format needs to be presented in a different format, the parties are willing to present the numbers in any format the committee would find more useful. **SEN.**

STAPLETON addressed **SEN. MCGEE.** He indicated he was interested in a bean counter's type of look at this. **SEN. MCGEE** said he did not bring the bill forward with the presumption that the bill has already passed the Legislature. There is a statewide fiscal analysis that was presented to the Law and Justice Interim Committee. The numbers have been updated as this evolved over time. He stated that **Mr. Freeborn** put this together and would be happy to make a presentation. In addition, **Brent Doig, Office of Budget and Program Planning**, has been working on these numbers for the last two and one-half years. This bill will go through the rigors of the process. If this bill, or some semblance of this bill, is not passed and funded, the suit will continue. If the suit continues, and if it is decided in favor of the ACLU, not only will there be a cost to the state for the suit, but everyone who has ever had public defense in the state of Montana theoretically could have a cause of action against the state of Montana for ineffective assistance of counsel. **SEN. STAPLETON** declared he was not convinced that going that route would not be less expensive. The court giving them a Chevy directive to follow might be a better course of action. **SEN. MCGEE** expressed regret that he ever made reference to an automobile. Every time there was a loss of liberty, whether criminal or civil, in which there was the allowable provision for public defense, they put it

in the bill. It is comprehensive in that regard. It is probably more comprehensive than they would have had to make it. That is what he was talking about when he said Cadillac. **SEN. STAPLETON** said this is important. He has been here on more than one occasion when the Senate Finance Committee had been the most important choke point. This bill started in the Senate, and he was not convinced that anyone would ever do the due diligence that this committee can do. **SEN. MCGEE** said it was their job to prove to the committee what it is that they have. The numbers they have are not verifiable at this point in time. He hopes the audit provision in the bill will make them verifiable at some point in the future. **Mr. Freeborn** said public defender services are currently being provided at a cost of $10.6 million. Of that, $8.2 million came from the audited state records of the Court Administrator. Those costs are pretty certain. **SEN. STAPLETON** asked if any one of these years would be $8 million. **Mr. Freeborn** advised $8.2 million in FY 2004 was expended by the office of the Court Administrator to provide district court public defender services. The figure came out of the SABHRS accounting system. **SEN. STAPLETON** asked, if SB 146 becomes law, it may cost as much as $8 million. **Mr. Freeborn** indicated some costs were being transferred from the current system from people that are currently providing public defender services. There are some incremental costs on top of those costs to provide the Chief Public Defender offices. Those have to be considered together. **SEN. STAPLETON** asked if the number would be greater than that. **Mr. Freeborn** said, when those numbers are combined, the total cost per fiscal year for the public defender system will be $13 million to $14 million. **SEN. STAPLETON** asked, if a Legislator in the next cycle that comes here for the first time looks at a fiscal note, if it could be $12 million to $14 million a year. **Mr. Freeborn** explained the costs he was talking about were relatively certain, and those costs will increase or decrease over time depending on fluctuations in caseload and the cost of goods and services. Non-reimbursed district court costs were more nebulous. They came up with a number of about $1.7 million; $1 million of those costs came from MACo and about $700,000 came from a written survey of various counties and phone calls he made trying to ferret out certain dollars. Those are the soft numbers that will go through the audit process. **SEN. STAPLETON** thought, with the most recent amendments, those soft costs will be incurred at the state level. The numbers they talk about on an annual basis probably will only go up.

SEN. COBB asked if they will be spending about $14 million in 2007 for the public defender program. **Mr. Freeborn** said, that is correct. **SEN. COBB** said he understood the next two years. In the third year and fourth year, the ACLU estimates as much as $22 million a year.

EXHIBIT(fcs60a03)

He thought there could be a big increase in the next biennium from the justice courts. He was not saying they should not do it, but because they have to fund it correctly, there could be a shortfall next session. **Mr. Freeborn** said he had not seen that analysis and could not respond. **SEN. COBB** said he would get copies.

SEN. JOHN ESP said he would like to segregate paragraph 167 from the amendment and discuss that later. That paragraph takes out 50% of the cost of the audit. He wanted to discuss that on its own merits. He asked **SEN. MCGEE** if he would be willing to expand the concept of the audit to look out into the future in regard to the questions between the counties and the state. **SEN. MCGEE** said he would be happy to include a concept like that in the bill. He asked if it would be for about five years, and **SEN. ESP** responded, yes. **SEN ESP** asked **Ms. Stoll** about an audit concept that looked at costs and the entitlement share over time with the idea they might true up with an amendment. **Ms. Stoll** said she was not clear on what that amendment might do. She pointed out that when this committee heard SB 176, the budget office had those numbers projected out as far as 2011. She thought they might want to revisit those numbers under SB 176. **SEN. ESP** said his concerns mirror the concerns of **SEN. STAPLETON.** They do not know what they are getting and what, for sure, they are not getting. They do not know what the counties may be paying for that the state does not know they are paying for. **Ms. Stoll** indicated she would have to see the amendment. She understood the concern about the growing numbers. With regard to Missoula County, this bill actually reduces the caseload. The bill establishes the poverty level at 133% of poverty. That is much lower than what Missoula County currently uses. They expect to see fewer people defended. In terms of the number of people defended, there is not going to be a growing explosion. She referred to the $8.2 million that was the actual cost in 2004 for the district court public defender program. She reminded the committee that they established $6 million for public defender costs in SB 176 in 2003. That has grown $700,000 per year. **SEN. ESP** said they got a rough number from the Supreme Court on the same costs in FY 03. It was $7.4 in FY 03 and $10.5 in FY 04. So far in 2005, they are up to $11 million a year. His question was if she would be willing to look at truing up the numbers based on whatever experience they have. Maybe the caseload will go down because of this bill. In that case, they may have to ratchet up the entitlement share again. He wanted to know if she was willing to look at some sort of shared responsibility concept into the future. **Ms. Stoll** thought her county would probably say they had given the state everything they had for district courts.

They gave the source of funding and money from their entitlement share. She thought if they had not changed to the flat tax fee on motor vehicles, they would have adequate money to cover the costs that have increased over the past couple of years. She asked **Mr. Bickell** if Missoula County would be willing to put more money into the system if it cost more in six years. **Mr. Bickell** thought it would be hard; Once they give up control of the justice court public defender costs, they have no way to control those costs like they do now. It would depend on how the amendment was written.

SEN. GALLUS called the question on Amendment SB014717.avl from 1-166 and from 168 through the end.

Vote: Motion carried 14-5 by voice vote with SEN. BALES, SEN. KEENAN, SEN. LIND, SEN. STAPLETON, and SEN. WILLIAMS voting no. SEN. BALES AND SEN. KEENAN voted no by proxy.

Motion: SEN. LAIBLE moved that SB 146 DO PASS AS AMENDED.

Discussion:

SEN. LAIBLE advised the only thing that bothers him about the bill is where the incentives are to hold costs down. **SEN. MCGEE** responded they do not know how many crimes will be committed, how many misdemeanors or felonies or civil commitments there will be. They do not know how many times those activities will involve people that need public defense. They do not know how many people will be convicted. **SEN. LAIBLE** contended if a county is not paying for services they could add more services on for indigent defense. **Ms. Stoll** replied the state does not control those costs currently. If Missoula County wanted to pay $150,000 for a public defender right now, the state is obligated to write the check. Having a some kind of state policy and standardization will better contain those costs. The point that **Mr. Bickell** makes is that the county controls the public defender costs right now in justice court. In the event that there is bad management at the state level, she wondered if the counties should be held responsible for that in 2011.

{Tape: 4; Side: A}

SEN. LAIBLE addressed the bill. The bill does not change the amount of money being spent or the amount of services they are providing through all these sources. The question is how much the state is going to increase their share of liability for these costs. The reverse of that is how much the cities and towns and local communities will reduce their costs. He understood why

SEN. ESP segregated his amendment. He thought the amendment was one of the most important components of this bill. He did not necessarily disagree with looking forward, but he thought that would show what the costs are to the state. If costs go up significantly, there might have to be an adjustment down the road as to the participation of local governments. He said he would support the bill and, most likely, **SEN. ESP'S** amendment.

SEN. BOB HAWKS said he could not make this decision based on the assumption that they do not know their costs. They know the caseload might go down with the change in poverty level. That group will get better defense, and that likely will push the cost up a little. The Legislature is in control of the law. They have estimates coming in. The outside risk they have is between $8.2 million and $10.6. He saw the lawsuit as the highest risk. **Mr. Freeborn** said that sounded logical. He found $10.6 million in current costs, and felt good about the $8.2 million he got out of the audit system. Caseloads could rise or fall depending on the services provided. The other costs are where the risks are. Of the $1.7 million, $1 million came from MACo. The $1.7 million is to provide public defender services as they are currently being provided in justice courts. He did not know if those costs were gathered correctly. Sometimes the information is difficult to interpret. The $674,000 were costs related to certain district court costs currently paid for by the counties. He thought there is a lot of risk in that number. The audit mechanism provides some mitigation of the risk. There is a $737,000 number that was attributed to public defender type services for cities, and that number has a lot of risk. Those are mostly misdemeanor type cases. Major felonies are in the district court arena. The types of cases attributed to that function are probably less likely to fluctuate. In the $10.6 million, which relates to current costs of the current system in Montana, $4 million is related to the Chief Public Defender office to provide centralized public defender services and manage the entire state system at the state level. Most of those costs were gathered from SB 218 and were inflated. He thought there was some risk in that area also. **SEN. HAWKS** asked if the fines that accrue from the penalties would come back to the state for providing the services. **Mr. Freeborn** advised that, in the district court area, those fines, fees, and forfeitures currently go into the general fund He did not know if this was a significant factor. This system will be highly variable as caseloads rise and fall. That is an additional risk to consider. **SEN. HAWKS** asked about the $13 million to $14 million and what would be a reasonable figure. **Mr. Freeborn** stressed the $13 million or $14 million was per fiscal year, and there is a startup year.

Motion: SEN. STAPLETON moved that SB14601.ATP BE ADOPTED.

EXHIBIT(fcs60a04)

Discussion:

SEN. STAPLETON said this was a policy question he put to the full body of the Senate. The amendment would locate the office in Butte, Montana. This would be an investment in Butte. There are probably marginal cost savings on an annual basis. The most logical place to him seemed to be Butte.

SEN. GALLUS welcomed the idea. It is a depressed area, and it would be significant for his district. A state employee living and working in Butte would find that they like it. It is a good community, it has culture, family activities, and recreation.

SEN. DAN WEINBERG advised he had not been to Butte, but it has just been characterized as depressed. They want to attract people to these jobs. He thought when professional people look for work, they also look for quality of life. He thought they might want to take that into consideration.

SEN. LAIBLE said he would support the amendment. It helps Butte, and Butte is a short distance from Helena. Every state program does not have to be located in Helena. One of the concerns is the law library is in Helena. The amount of people that use the law library is much reduced, because they are all doing it online. Putting people in close proximity to Deer Lodge has some definite advantages. He disagreed with **SEN. WEINBERG** and thought people would find that Butte is a lovely community, and their quality of life might be much better there. Their cost of housing might be better there than in Helena. They still have the ability to go to Helena. He lives in Ravalli County, about an hour from Missoula. When he wants what Missoula has to offer, he can drive there.

SEN. SCHMIDT asked **Pam Bucy, Attorney General's Office**, to comment on locating the office in Butte. **Ms. Bucy** addressed the discussion of the proximity to Deer Lodge. The only time the proximity to Deer Lodge would be relevant is in the Appellant Bureau. The prosecution side is in Helena at the Department of Justice. The Appellant Bureau is a small part of the bill. Most government lawyers have access to the internet; a contract lawyer may not. State lawyers are not paid well in Montana. They do not compete at all nationally. She said she loves Butte, but the Department recruits by offering quality of life.

SEN. GALLUS invited **SEN. WEINBERG** and his wife, and the rest of the committee, to float the Big Hole River with him and his wife. They will go to the Uptown Cafe for one of the best meals they will ever have in the state of Montana. After that, they will go down to the Mother Lode Theater and watch a play or symphony. They will find that Butte, Montana, has as much culture as anywhere in the state.

SEN. LANE LARSON commented that, being from eastern Montana, Miles City would welcome this opportunity with open arms. Billings is not a bad place either.

Vote: Motion carried 10-9 by roll call vote with SEN. BALES, SEN. HAWKS, SEN. LARSON, SEN. RYAN, SEN. SCHMIDT, SEN. TESTER, and SEN. WEINBERG voting no. SEN. COBB and SEN. HANSEN voted no by proxy.

Motion: SEN. ESP moved that SB 146 DO PASS AS AMENDED.

Motion: SEN. ESP moved that SB014603.ATP BE ADOPTED.

EXHIBIT(fcs60a05)

Discussion:

CHAIRMAN COONEY asked **Ms. Purdy** to comment. **Ms. Purdy** explained the reason the Fiscal Analyst is in the amendment is because of the revenue calculation that will need to be made. The committee could have that done in conjunction with the Audit Division and have an audit committee also receive that.

Vote: Motion carried unanimously by voice vote.

Motion: SEN. GALLUS moved that SB 146 DO PASS AS AMENDED.

Discussion:

SEN. COBB said he believes next biennium they are $3 million to $6 million or more short each year. They have a badly funded program now, and it is still underfunded just moving it to the state level. He did not want them to have big hearings like they did last session to find out what happened. He said he would make copies of what the ACLU thinks might happen. It might cost more, and it might cost less. He thinks it will cost more.

SEN. WILLIAMS thanked **SEN. MCGEE** for the work he did on this. Of the bills they had before them this session, this is in the top five of importance. They have not talked much about the human cost of this bill. This is something that has not been dealt

with for thirty years that they need to deal with now. Many people have been involved in this consensus. With the exception of a couple of amendments she would have liked to have gone differently, she thought this is something they have to support in this committee and on the floor. She served on the Justice Foundation Board for five years. They see these problems with ineffective counsel coming to them all the time. It is the human cost to families in Montana, people who have been wrongly incarcerated, and all those who have not been spoken for that she wanted them to also consider. It is the right time to do this.

{Tape: 4; Side: B}

SEN. RYAN commented every one of them were affected by this bill. This is protection for them, because they do not know what the future holds. This is not just for the indigent right now. This is protection for all citizens of the state of Montana.

SEN. STAPLETON congratulated **SEN. MCGEE** and all the people who worked on this. He agreed that this bill needs to move forward. He cannot support this bill until he has a better feel for the numbers. He said they have endorsed something before when they did not have the proper numbers. He hoped by the time the bill is on the floor that they will have some of those. He would like to support the bill. He expressed appreciation for the support for his amendment.

Vote: Motion carried 17-2 by roll call vote with SEN. STAPLETON voting no. SEN. KEENAN voted no by proxy.

Motion: SEN. COONEY moved THAT A COMMITTEE BILL BE DRAFTED TO SUNSET THE 30% CARRY FORWARD PROVISION OF 17-7-303 FOR TWO YEARS. ALL OF THE REVENUE THAT WOULD BE COVERED IN THIS WOULD REVERT BACK TO THE ORIGINAL FUNDING SOURCE.

CHAIRMAN COONEY advised this is related to **SEN. BRUEGGEMAN'S** bill. That bill raised the 30% to 50%, the committee approved that, and he supported that. The carry forward funds are of concern because they apply to the spending cap. This was one way that they might be able to legitimately try to deal with the cap issue. If the bill is drafted, and if it is successful, it would prevent the agencies from taking any carry forward for the next two years. It would reduce the cap by about $16 million.

SEN. STAPLETON asked if this is a committee bill that would change the spending cap. **CHAIRMAN COONEY** said it will not change the spending cap. If the bill passes, it will not allow agencies to carry forward approximately $16 million that applies to the cap. It is not changing the cap. If **SEN. BRUEGGEMAN'S** bill goes

forward it will be 50%. Under the 30%, it will prevent $16 million from going forward.

SEN. BRUEGGEMAN asked if the effective date would be on passage and approval and if it would apply to the budget cycle they are in currently. **Ms. Purdy** replied, **SEN. BRUEGGEMAN** was right.

SEN. ESP asked if they use potential carry forward funds in the calculation of the budget cap. **Ms. Purdy** replied as long as there is a potential for a carry forward. The carry forward has to be approved by the approving authorities by a certain date. **SEN. ESP** contended if the administration did not want this to apply to the cap, they could not approve any carry forwards for this biennium. That would end the issue, and it would no longer apply towards the cap. **CHAIRMAN COONEY** suspected that the budget office could do that, but he wanted to give some legislative direction. As they are dealing with HB 2, the more they can add clarity to this, the better off they will be. This is just a sunset for two years. **SEN. ESP** requested a day to talk to the budget director to see if he would just be willing to do this. **CHAIRMAN COONEY** indicated if they do not do this, it will not show up on the status sheet. If this goes forward, it will appear on the status sheet and show a reduction in spending.

SEN. STAPLETON asked if this is narrow enough not to be used later to blow the cap. **CHAIRMAN COONEY** replied this specifically will be dealing with the 30% carry forward. He maintained there was no intention to try to create a vehicle that would allow them to blow the cap.

SEN. COBB said if they passed this bill, a third of the $16 million would revert to the general fund. That would increase the inversions by $5 million for the end of the biennium. **Ms. Purdy** agreed that would be an effect of this bill. **SEN. COBB** said when they come back, they would have another $5 million.

SEN. BARKUS asked if the $16 million was for the 2005 biennium, and if they already know it will be $16 million. **Ms. Purdy** said it is an estimate; the closer they get to the end of the fiscal year, the more they know. **SEN. BARKUS** said the bill would affect the 2007 biennium, and if **SEN. BRUEGGEMAN'S** bill passes, it is 50%. He asked if that was of concern.

SEN. BRUEGGEMAN suggested one way to do this correctly was sunset the 30% for this fiscal year, and change the number to 50% for the next fiscal year.

SEN. BALES commented, if there is an estimate of what these funds will be and what the 30% figure will be, they will have to know that by department. He inquired if it would be easier to take that into account in HB 2 and reduce their budgets by that amount, rather than going with a committee bill. **CHAIRMAN COONEY** thought there may be other vehicles that could be used to do this. He was trying to find a legitimate way to show they are reducing the cap issue. If they do it the way **SEN. BALES** is suggesting, it will only occur if that action is actually taken. This is an important statement to be made in an effort to show they are looking for ways to reduce the money that applies to the cap. Whatever amount it is will not apply to the cap.

Vote: Motion carried 13-6 with SEN. BALES, SEN. BARKUS, SEN. COBB, SEN. ESP, SEN. KEENAN, and SEN. LAIBLE voting no.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. MIKE COONEY, Chairman

PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs60aad0.PDF)

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Finance and Claims** recommend that **Senate Bill 146** (second reading copy -- yellow) **do pass as amended.**

Signed: _____
Senator Mike Cooney, Chair

And, that such amendments read:

1. Title, page 1, line 28.
Following: line 27
Strike: "26-2-505,"

2. Title, page 1, line 29.
Following: "41-5-111,"
Strike: "41-5-112,"

3. Page 3, line 17.
Following: "commission"
Strike: "may"
Insert: "shall"

4. Page 3, line 18.
Following: line 17
Strike: "provide that public defenders work with a court to establish assignment rosters or other methodologies to"

5. Page 8, line 19.
Following: "defender."
Insert: "The office must be located in Butte, Montana."

6. Page 9, line 30.
Following: "(4)"
Insert: "establish processes and procedures to"

7. Page 12, line 12.
Following: "(b)"

Committee Vote:
Yes 17, No 2.

Strike: "consult with the courts within the region and"
Following: "establish"
Strike: "agreed-upon"

8. Page 14, line 1.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

9. Page 14, line 8.
Following: "**Eligibility --**"
Strike: "**processing fee --**"

10. Page 14, line 9.
Following: "~~**indigence**~~ --"
Strike: "**contributions toward costs --**"

11. Page 14, line 30.
Following: "application"
Strike: "or pay the processing fee"
Following: "in"
Insert: "civil"

12. Page 15, line 8.
Strike: "and"
Insert: "or"

13. Page 16, line 11.
Following: "screening"
Strike: "and collect processing fees and contribution amounts payable"

14. Page 16, line 18.
Following: "screening"
Strike: "or collection activities"

15. Page 21, line 20.
Following: "~~all~~"
Insert: "all"

16. Page 21, line 21 through line 22.
Following: "These costs" on line 21
Strike: remainder of line 21 through "3-1-1601 and" on line 22

17. Page 21, line 22.
Following: "~~to~~"
Insert: "but are not limited to"

18. Page 21, line 30.
Following: "(b)"

Strike: "except as provided in [section 7(5)], the following expenses"

19. Page 22, line 5.
Following: "examination"
Strike: "only"
Insert: "and other associated expenses"

20. Page 22, line 6.
Following: "46-14-202(4)"
Insert: "(a)(i) and (4)(a)(iii)"

21. Page 22, line 7.
Following: "46-14-221,"
Insert: "the"

22. Page 24, line 27.
Following: "paid"
Strike: "by the"
Following: "~~corrections~~"
Strike: "office of state public defender"

23. Page 26, line 29.
Following: "(i)"
Strike: "(A)"

24. Page 27, line 9.
Following: line 8
Insert: "Cascade $157,151"

25. Page 27, line 15.
Following: line 14
Insert: "Flathead $33,655
Gallatin $222,029"

26. Page 27, line 23.
Following: line 22
Insert: "Lewis and Clark $247,886"

27. Page 27, line 29.
Following: line 28
Insert: "Missoula $310,195"

28. Page 28, line 21.
Following: line 20
Insert: "Yellowstone $266,644"

29. Page 28, line 21.
Strike: "$30,735"

Insert: "$20,707"

30. Page 28, line 22.
Strike: "$113,999"
Insert: "$53,057"

31. Page 28, line 23.
Strike: "$614"
Insert: "$675"

32. Page 28, line 24.
Strike: "$234"
Insert: "$258"

33. Page 28, line 25.
Strike: "$2,573"
Insert: "$2,828"

34. Page 28, line 26.
Strike: "$130"
Insert: "$143"

35. Page 28, line 27.
Strike: "$10,649"
Insert: "$11,704"

36. Page 28, line 28.
Strike: "$961"
Insert: "$1,056"

37. Page 28, line 29.
Strike: "$1,028"
Insert: "$1,130"

38. Page 28, line 30.
Strike: "$2,648"
Insert: "$2,910"

39. Page 29, line 1.
Strike: "$148,763"
Insert: "$163,499"

40. Page 29, line 2.
Strike: "$2,129"
Insert: "$2,340"

41. Page 29, line 3.
Strike: "$48,046"
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42. Page 29, line 4.
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107. Page 31, line 9.
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108. Page 31, line 10.
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Insert: "$410"

109. Page 31, line 11.
Strike: "$212"
Insert: "$234"

110. Page 31, line 12.
Strike: "$12,877"
Insert: "$14,152"

111. Page 31, line 13.
Strike: "$94,866"
Insert: "$104,264"

112. Page 31, line 14.
Strike: "$291"
Insert: "$319"

113. Page 31, line 15.
Strike: "$487"
Insert: "$536"

114. Page 31, line 16.
Strike: "$136"
Insert: "$149"

115. Page 31, line 17.

Strike: "$164"
Insert: "$180"

116. Page 31, line 18.
Strike: "$114"
Insert: "$125"

117. Page 31, line 19.
Strike: "$1,467"
Insert: "$1,612"

118. Page 31, line 20.
Strike: "$1,286"
Insert: "$1,413"

119. Page 31, line 21.
Strike: "$1,826"
Insert: "$2,007"

120. Page 31, line 22.
Strike: "$2,898"
Insert: "$3,185"

121. Page 31, line 23.
Strike: "$205"
Insert: "$225"

122. Page 31, line 24.
Strike: "$7,026"
Insert: "$7,722"

123. Page 31, line 25.
Strike: "$1,405"
Insert: "$1,544"

124. Page 31, line 26.
Strike: "$3,551"
Insert: "$3,903"

125. Page 31, line 27.
Strike: "$239"
Insert: "$263"

126. Page 31, line 28.
Strike: "$281"
Insert: "$309"

127. Page 31, line 29.
Strike: "$2,968"

Insert: "$3,262"

128. Page 31, line 30.
Strike: "$2,984"
Insert: "$3,280"

129. Page 32, line 1.
Strike: "$423"
Insert: "$465"

130. Page 32, line 2.
Strike: "$322"
Insert: "$354"

131. Page 32, line 3.
Strike: "$1,636"
Insert: "$1,798"

132. Page 32, line 4.
Strike: "$5,165"
Insert: "$5,677"

133. Page 32, line 5.
Strike: "$1,047"
Insert: "$1,150"

134. Page 32, line 6.
Strike: "$7,049"
Insert: "$7,747"

135. Page 32, line 7.
Strike: "$670"
Insert: "$737"

136. Page 32, line 8.
Strike: "$2,787"
Insert: "$3,063"

137. Page 32, line 9.
Strike: "$1,244"
Insert: "$1,367"

138. Page 32, line 10.
Strike: "$645"
Insert: "$709"

139. Page 32, line 11.
Strike: "$1,384"
Insert: "$1,521"

140. Page 32, line 12.
Strike: "$920"
Insert: "$1,011"

141. Page 32, line 13.
Strike: "$2,067"
Insert: "$2,272"

142. Page 32, line 14.
Strike: "$2,848"
Insert: "$3,130"

143. Page 32, line 15.
Strike: "$2,990"
Insert: "$3,286"

144. Page 32, line 16.
Strike: "$1,505"
Insert: "$1,654"

145. Page 32, line 17.
Strike: "$633"
Insert: "$695"

146. Page 32, line 18.
Strike: "$744"
Insert: "$817"

147. Page 32, line 19.
Strike: "$203"
Insert: "$223"

148. Page 32, line 20.
Strike: "$1,076"
Insert: "$1,183"

149. Page 32, line 21.
Strike: "$1,895"
Insert: "$2,083"

150. Page 32, line 22.
Strike: "$239"
Insert: "$263"

151. Page 32, line 23.
Strike: "$1,578"
Insert: "$1,734"

152. Page 32, line 24.
Strike: "$9,036"
Insert: "$9,932"

153. Page 32, line 25.
Strike: "$1,719"
Insert: "$1,889"

154. Page 32, line 26.
Strike: "$812"
Insert: "$893"

155. Page 32, line 27.
Strike: "$236"
Insert: "$259"

156. Page 32, line 28.
Strike: "$286"
Insert: "$314"

157. Page 32, line 29.
Strike: "$4,092"
Insert: "$4,497"

158. Page 32, line 30 through page 33, line 3.
Strike: subsection (b) in its entirety

159. Page 39, line 7 through line 11.
Strike: section 24 in its entirety
Renumber: subsequent sections

160. Page 56, line 2 through line 10.
Strike: section 38 in its entirety
Renumber: subsequent sections

161. Page 60, line 29 through line 30.
Following: "nurse or" on line 29
Strike: ", if" on line 29 through "community," on line 30

162. Page 61, line 3.
Following: "~~The~~"
Strike: "If the examination cannot be done without a commitment, the"
Insert: "The"

163. Page 61, line 10 through line 14.
Strike: subsection (4) in its entirety
Insert: "(4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the office of court administrator, as provided in 3-5-901;

(ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the office of state public defender;

(iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the office of court administrator and the office of state public defender.

(b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

(i) the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication."

164. Page 79, line 5 through line 15.
Strike: section 63 in its entirety
Insert: "Section 61. Section 53-30-110, MCA, is amended to read:

"53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and~~ or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner~~, properly~~. The statement must be certified by a district judge of the county.

(2) The statement must be sent to the department of corrections for its approval. After ~~such~~ the approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

(3) Public defender costs, if any, must be paid pursuant to the Montana Public Defender Act provided for in [sections 1 through 4 and 6 through 14]."

165. Page 86, line 21.
Strike: "70(5)"
Insert: "68(5)"

166. Page 87, line 16.
Following: "(1)"
Insert: "for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County"

167. Page 87, line 17 through line 26.
Following: "CONDUCTED" on line 17
Strike: remainder of line 17 through "PROCEEDINGS." on line 26
Insert: "on all actual costs for public defender services in district court and justice's court proceedings incurred from July 1, 1998, through June 30, 2004, for which records exist. The audit must separate the costs by expenditure category and distinguish between costs paid by a county and costs paid or reimbursed by the state."

168. Page 87, line 28.
Following: "AUDIT"
Insert: "for that county"

169. Page 87, line 29.
Following: "(4)"
Strike: "THE"
Insert: "By April 30, 2006, the"

170. Page 88, line 1 through line 9.
Strike: subsection (5) in its entirety
Insert: "(5) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative session that will amend 15-1-121 to provide that the base entitlement share for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties.

(6)(a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local

governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services in [this act] for the same time period.

(b) The results of the comparison must be presented to the governor, legislative finance committee, law and justice interim committee, and supreme court by September 1 of the following fiscal year."

Renumber: subsequent subsection

171. Page 88, line 24.
Strike: the second "AND"

172. Page 88, line 25.
Following: line 24
Insert: "(vii) costs of psychiatric evaluations under 46-14-202 and 46-14-221, including the cost of examinations and other associated expenses; and"
Renumber: subsequent subsection

173. Page 89, line 18.
Following: line 17
Insert: "COORDINATION SECTION. **Section 77. Coordination instruction.** If [this act] is passed and approved and it includes a section that amends 15-1-121(3)(a)(i) and:

(1) if House Bill No. 223 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 223 is void;

(2) if House Bill No. 334 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 334 is void;

(3) if House Bill No. 671 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 671 is void; and

(4) if Senate Bill No. 67 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in Senate Bill No. 67 is void."

174. Page 89, line 29.
Strike: subsection (2) in its entirety
Insert: "(2) [Sections 17 through 19, 24 through 29, 34 through 67, and 74] are effective July 1, 2006."

- END -

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 2
DATE 2-18-03
BILL NO. SB 146

Amendments to Senate Bill No. 146
2nd Reading Copy

Requested by Senator Dan McGee

For the Senate Finance and Claims Committee

Prepared by Valencia Lane
March 18, 2005 (7:41am)

1. Title, page 1, line 28.
Following: line 27
Strike: "26-2-505,"

2. Title, page 1, line 29.
Following: "41-5-111,"
Strike: "41-5-112,"

3. Page 3, line 17.
Following: "commission"
Strike: "may"
Insert: "shall"

4. Page 3, line 18.
Following: line 17
Strike: "provide that public defenders work with a court to establish assignment rosters or other methodologies to"

5. Page 9, line 30.
Following: "(4)"
Insert: "establish processes and procedures to"

6. Page 12, line 12.
Following: "(b)"
Strike: "consult with the courts within the region and"
Following: "establish"
Strike: "agreed-upon"

7. Page 14, line 1.
Strike: subsection (a) in its entirety
Renumber: subsequent subsections

8. Page 14, line 8.
Following: "**Eligibility --**"
Strike: "**processing fee --**"

9. Page 14, line 9.
Following: "~~indigence~~ --"
Strike: "contributions toward costs --"

10. Page 14, line 30.
Following: "application"
Strike: "or pay the processing fee"
Following: "in"
Insert: "civil"

11. Page 15, line 8.
Strike: "and"
Insert: "or"

12. Page 16, line 11.
Following: "screening"
Strike: "and collect processing fees and contribution amounts payable"

13. Page 16, line 18.
Following: "screening"
Strike: "or collection activities"

14. Page 21, line 20.
Following: "~~all~~"
Insert: "all"

15. Page 21, line 21 through line 22.
Following: "These costs" on line 21
Strike: remainder of line 21 through "3-1-1601 and" on line 22

16. Page 21, line 22.
Following: "~~to~~"
Insert: "but are not limited to"

17. Page 21, line 30.
Following: "(b)"
Strike: "except as provided in [section 7(5)], the following expenses"

18. Page 22, line 5.
Following: "examination"
Strike: "only"
Insert: "and other associated expenses"

19. Page 22, line 6.
Following: "46-14-202(4)"
Insert: "(a) and (4)(c)"

20. Page 22, line 7.
Following: "46-14-221,"
Insert: "the"

21. Page 24, line 27.

Following: "paid"
Strike: "by the"
Following: "~~corrections~~"
Strike: "office of state public defender"

22. Page 26, line 29.
Following: "(i)"
Strike: "(A)"

23. Page 27, line 9.
Following: line 8
Insert: "Cascade $157,151"

24. Page 27, line 15.
Following: line 14
Insert: "Flathead $33,655
Gallatin $222,029"

25. Page 27, line 23.
Following: line 22
Insert: "Lewis and Clark $247,886"

26. Page 27, line 29.
Following: line 28
Insert: "Missoula $310,195"

27. Page 28, line 21.
Following: line 20
Insert: "Yellowstone $266,644"

28. Page 28, line 21.
Strike: "$30,735"
Insert: "$20,707"

29. Page 28, line 22.
Strike: "$113,999"
Insert: "$53,057"

30. Page 28, line 23.
Strike: "$614"
Insert: "$675"

31. Page 28, line 24.
Strike: "$234"
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Strike: "$2,573"
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Insert: "$2,910"

38. Page 29, line 1.
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105. Page 31, line 8.
Strike: "$3,084"
Insert: "$3,389"

106. Page 31, line 9.
Strike: "$2,261"
Insert: "$2,485"

107. Page 31, line 10.
Strike: "$373"
Insert: "$410"

108. Page 31, line 11.
Strike: "$212"
Insert: "$234"

109. Page 31, line 12.
Strike: "$12,877"
Insert: "$14,152"

110. Page 31, line 13.
Strike: "$94,866"
Insert: "$104,264"

111. Page 31, line 14.
Strike: "$291"
Insert: "$319"

112. Page 31, line 15.
Strike: "$487"
Insert: "$536"

113. Page 31, line 16.
Strike: "$136"
Insert: "$149"

114. Page 31, line 17.
Strike: "$164"
Insert: "$180"

115. Page 31, line 18.
Strike: "$114"
Insert: "$125"

116. Page 31, line 19.
Strike: "$1,467"
Insert: "$1,612"

117. Page 31, line 20.
Strike: "$1,286"
Insert: "$1,413"

118. Page 31, line 21.
Strike: "$1,826"
Insert: "$2,007"

119. Page 31, line 22.
Strike: "$2,898"
Insert: "$3,185"

120. Page 31, line 23.
Strike: "$205"

Insert: "$225"

121. Page 31, line 24.
Strike: "$7,026"
Insert: "$7,722"

122. Page 31, line 25.
Strike: "$1,405"
Insert: "$1,544"

123. Page 31, line 26.
Strike: "$3,551"
Insert: "$3,903"

124. Page 31, line 27.
Strike: "$239"
Insert: "$263"

125. Page 31, line 28.
Strike: "$281"
Insert: "$309"

126. Page 31, line 29.
Strike: "$2,968"
Insert: "$3,262"

127. Page 31, line 30.
Strike: "$2,984"
Insert: "$3,280"

128. Page 32, line 1.
Strike: "$423"
Insert: "$465"

129. Page 32, line 2.
Strike: "$322"
Insert: "$354"

130. Page 32, line 3.
Strike: "$1,636"
Insert: "$1,798"

131. Page 32, line 4.
Strike: "$5,165"
Insert: "$5,677"

132. Page 32, line 5.
Strike: "$1,047"
Insert: "$1,150"

133. Page 32, line 6.
Strike: "$7,049"
Insert: "$7,747"

134. Page 32, line 7.
Strike: "$670"
Insert: "$737"

135. Page 32, line 8.
Strike: "$2,787"
Insert: "$3,063"

136. Page 32, line 9.
Strike: "$1,244"
Insert: "$1,367"

137. Page 32, line 10.
Strike: "$645"
Insert: "$709"

138. Page 32, line 11.
Strike: "$1,384"
Insert: "$1,521"

139. Page 32, line 12.
Strike: "$920"
Insert: "$1,011"

140. Page 32, line 13.
Strike: "$2,067"
Insert: "$2,272"

141. Page 32, line 14.
Strike: "$2,848"
Insert: "$3,130"

142. Page 32, line 15.
Strike: "$2,990"
Insert: "$3,286"

143. Page 32, line 16.
Strike: "$1,505"
Insert: "$1,654"

144. Page 32, line 17.
Strike: "$633"
Insert: "$695"

145. Page 32, line 18.
Strike: "$744"

Insert: "$817"

146. Page 32, line 19.
Strike: "$203"
Insert: "$223"

147. Page 32, line 20.
Strike: "$1,076"
Insert: "$1,183"

148. Page 32, line 21.
Strike: "$1,895"
Insert: "$2,083"

149. Page 32, line 22.
Strike: "$239"
Insert: "$263"

150. Page 32, line 23.
Strike: "$1,578"
Insert: "$1,734"

151. Page 32, line 24.
Strike: "$9,036"
Insert: "$9,932"

152. Page 32, line 25.
Strike: "$1,719"
Insert: "$1,889"

153. Page 32, line 26.
Strike: "$812"
Insert: "$893"

154. Page 32, line 27.
Strike: "$236"
Insert: "$259"

155. Page 32, line 28.
Strike: "$286"
Insert: "$314"

156. Page 32, line 29.
Strike: "$4,092"
Insert: "$4,497"

157. Page 32, line 30 through page 33, line 3.
Strike: subsection (b) in its entirety

158. Page 39, line 7 through line 11.

Strike: section 24 in its entirety
Renumber: subsequent sections

159. Page 56, line 2 through line 10.
Strike: section 38 in its entirety
Renumber: subsequent sections

160. Page 60, line 29 through line 30.
Following: "nurse or" on line 29
Strike: ", if" on line 29 through "community," on line 30

161. Page 61, line 3.
Following: "~~The~~"
Strike: "If the examination cannot be done without a commitment, the"
Insert: "The"

162. Page 61, line 10 through line 14.
Strike: subsection (4) in its entirety
Insert: "(4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the office of court administrator, as provided in 3-5-901;

(ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the office of state public defender;

(iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the office of court administrator and the office of state public defender.

(b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

(i) the expenses of transporting the defendant from the place of detention to the place where the examination is performed and returning the defendant to detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication."

163. Page 79, line 5 through line 15.
Strike: section 63 in its entirety
Insert: **"Section 61.** Section 53-30-110, MCA, is amended to read:

"53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and~~ or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner~~, properly~~. The statement must be certified by a district judge of the county.

(2) The statement must be sent to the department of corrections for its approval. After such approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

(3) Public defender costs, if any, must be paid pursuant to the Montana Public Defender Act provided in [section 1 through 4 and 6 through 14]."

{*Internal References to 53-30-110: x7-6-2426*}"

164. Page 86, line 21.
Strike: "70(5)"
Insert: "68(5)"

165. Page 87, line 16.
Following: "(1)"
Insert: "for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County"

166. Page 87, line 17 through line 26.
Following: "CONDUCTED" on line 17
Strike: remainder of line 17 through "PROCEEDINGS." on line 26
Insert: "on all actual costs for public defender services in district court and justice court proceedings incurred from July 1, 1998, through June 30, 2004, for which records exist. The audit must separate the costs by expenditure category and distinguish between costs paid by a county and costs paid or reimbursed by the state."

167. Page 87, line 27.
Following: "FOR"

Insert: "50% of"

168. Page 87, line 28.
Following: "AUDIT"
Insert: "for that county"

169. Page 87, line 29.
Following: "(4)"
Strike: "THE"
Insert: "By April 30, 2006, the"

170. Page 88, line 1 through line 9.
Strike: subsection (5) in its entirety
Insert: "(5) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative session that will amend 15-1-121 to provide that the base entitlement share for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, and Yellowstone County is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties."

171. Page 88, line 24.
Strike: "AND"

172. Page 88, line 25.
Following: line 24
Insert: "(vii) costs of psychiatric evaluations under 46-14-202 and 46-14-221, including the cost of examinations and other associated expenses; and"
Renumber: subsequent subsection

173. Page 89, line 18.
Following: line 17
Insert: "COORDINATION SECTION. **Section 77. Coordination instruction.** If [this act] is passed and approved and it includes a section that amends 15-1-121(3)(a)(i) and:

(1) if House Bill No. 223 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 223 is void;

(2) if House Bill No. 334 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 334 is void;

(3) if House Bill No. 671 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 671 is void; and

(4) if Senate Bill No. 67 is passed and approved and it

includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in Senate Bill No. 67 is void."

174. Page 89, line 29.
Strike: subsection (2) in its entirety
Insert: "(2) [Sections 17 through 19, 24 through 29, 34 through 67, and 74] are effective July 1, 2006."

- END -

EXHIBIT NO. 3
DATE 3/9/2005 3/15/05
BILL NO. SB 146

STAFFING ISSUES RE: SB 146

Current Lack of Adequate Staffing:

Montana currently has no statewide policies limiting the number of cases defenders may be assigned and no uniform policies or procedures for collecting, maintaining or analyzing data. It appears that many defenders handle caseloads in excess of the national standards. The new bill provides for the Chief Public Defender and the PD commission to promulgate such standards. However, there is no provision in the proposed fiscal note for the inevitable and significant increase in the number of full time public defenders that will be needed to handle even just the felony, misdemeanor and the related appellate caseload.

Felony Staffing:

- The current cost estimates assume that the new PD trial staff will consist of the 66.75 FTEs located in the 7 county public defender offices. Of these FTEs 40 are attorneys and 26.75 are support staff. The figure also assumes that these attorneys will handle felonies, juvenile cases, abuse and neglect cases and mental health commitments, misdemeanors and city court cases. However the current staffing plans are insufficient.

- Using national standards as a guide, we estimate that **Montana must employ 45-55 FTE attorneys just to handle Montana's non-homicide felony caseload consistent with national norms of representation.** Given the numbers of homicide cases in Montana and the State's capital case standards, the number of total felony attorneys would likely be closer to 55-65. The 45-55 FTE attorney figure was determined by adapting NLADA's public defender projected staffing formula to what we know about Montana.[1]

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[1] The NLADA's projected staffing formula is as follows:

(a). **Montana indigent felony case filings = 6132.75**
According to 2003 Annual Supreme Court Report 8,036 felonies were filed that year - may be more because, as we know, the numbers in the report are not reliable. According to county clerk responses to our statewide FOIA requests, between 80-99% of felonies filed in each county are assigned to PDs. Using 85% as a guide, 8,036 divided by .85 = 6132.75

(b). **Public Defender Work Year = 1920 hours per year**
Assumes 40 hour work week for 48 weeks = 1920 work hours per year.

©. **Average Hours-per-Felony Disposition = 12.8 hours per (non-homicide) felony**
NAC standards require that PD caseload should not exceed 150 felonies per full-time attorney per year. NLADA arrived at avg. hrs/disposition standard by dividing the PD work year (1920) by the NAC caseload limit (150) = 12.8 hours per felony disposition. Note: that the NAC does not make recommendations for homicide cases which will require a PD to handle a lesser number of cases than 150 and will raise the hours per disposition rate because they are more time-consuming and are less likely to be plea bargained.

(d). **Montana lawyers will have to work 78,500 hours to handle State's indigent felonies.**

Misdemeanor Staffing:

- Montana justice courts currently provide **little or no representation** for most of the indigent people charged with misdemeanors in violation of U.S. Supreme Court mandate.

- ***Constitutional right to counsel for misdemeanors.***

  - ***Argersinger v. Hamlin*, 407 U.S. 25 (1972)**: Supreme Court requires appointment of counsel for indigents charged with misdemeanors involving possible imprisonment.

  - ***Alabama v. Shelton*, 535 U.S. 654 (2002)**: requires appointment for indigents charged with misdemeanors involving a suspended sentence.

  - **In order to comply with the Supreme Court's ruling in *Shelton*, Montana must supply lawyers to indigents charged with misdemeanors in greater numbers than they do now.**

  - People charged with misdemeanors routinely appear before courts without counsel, even when taking guilty pleas.

  - Because these folks are unrepresented, they are not aware of the effect a criminal record may have on other aspects of their lives: employment, housing, eligibility for health or income-support benefits, or immigration status.

  - **Uncounseled pleas often generate future court actions at considerable public expense.**

    - Although inappropriate misdemeanor convictions may not mean lengthy jail sentences, the life consequences of convictions can be severe, including job loss, family breakup, substance abuse and deportation. These avoidable consequences will cost the indigent defense system in terms of abuse/neglect cases, youth in need of care, and recidivism in adult criminal cases.

To determine the number of hours necessary to dispose of all felonies statewide, NLADA multiplies the hrs/disposition (12.8) by the attorney caseload (6,132.75) = 78,499.2 hours. Thus, in a year, Montana felony lawyers will have to work approximately 78,500 hours to dispose of all felonies assigned.

(e). To project the number of full-time PD's needed to staff felonies statewide, NLADA divides the hours necessary per year (78,500) by the hours available to PDs per year (1920) = **40.8 FTE lawyers for felonies alone. For the reasons outlined above this is a very conservative estimate.**

- For example, clients charged with a 4th DUI Felony (based upon 3 prior DUI misdemeanor convictions), often challenge the validity of their uncounseled convictions on the prior misdemeanors.

- Clients raise these issues during their felony cases, on appeal and when seeking post-conviction relief.

- Misdemeanor caseload data is unavailable. Legislative staffers estimate that there are 3 misdemeanors for 1 felony (i.e., 3 times as many). This unknown number would significantly affect an estimate of FTE positions required to handle the caseload.

Existing problems that would not be remedied unless the FTE estimates are increased in the proposed bill:

- Because the indigent defense programs are understaffed, public defenders have to juggle their in-court time, their client time and their office time. As a result:
  - Public defenders do not have adequate time to meet with their clients to obtain the necessary facts to defend against the charges
  - Many public defenders do not have the necessary regular and periodic substantive meetings with their clients to discuss the progress of the case. Letters from clients indicating that weeks, if not months, had passed since they had last heard from their attorneys are not uncommon.
  - It is not unusual for counsel to adjourn critical stages of their client's cases for months because of lack of time or preparedness.
  - Public defenders do not have the time to adequately prepare for hearings, trials and appeals or investigate the facts and the law.
  - Many public defenders are appointed dangerously late in the process and initial client contact is often put off for weeks.
  - Clients have their rights to appeal waived because the trial lawyers are too busy or ill trained to protect their right to appeal.

ESTIMATING COSTS OF THE NEW STATEWIDE PUBLIC DEFENDER SYSTEM

If current fiscal note budget figures continue to govern the funding allocation for the new public defender agency, it will fail before it begins. The funding figures are based upon inadequate current spending by the state for felony cases and the counties for misdemeanor cases. The county misdemeanor spending figures are supplied by MACO and are unaudited. The proposed budget is not based upon any knowledge of what an adequate PD personnel infrastructure would be, it does not reflect the necessary start up and recurring technology expansion costs, and it does not provide for the development of an appropriate appellate function or statewide training function.

The Current System

Under the current system, the indigent defense services are unconstitutional. The system has developed as a hodge-podge of 56 separate county systems with no uniform funding, administrative or practice policies or procedures to ensure that lawyer services are delivered in a constitutionally adequate manner across the state. As a result, virtually all of the indigent defense services in these counties are currently funded and staffed without regard to the basic necessities of an adequate defense.

The proposed legislation seeks to establish long overdue statewide policies and procedures through a public defender commission and a state public defender. However, these **entities will not be able to remedy the deficiencies of the current system unless they are provided with sufficient funds to design, implement and monitor the necessary standards, systems, personnel infrastructure and technology linkages that Montana has been without for close to 30 years.**

Current Lack of Funding:

Despite our best efforts, we have not been able to impact the fiscal notes. Harry Freeborn told us he could only work with the numbers supplied the Interim Law and Justice Committee and it was now in the hands of the Brent Doig. Brent Doig told us he had no authority to go beyond the numbers provided him. The day the governor's budget was released with no mention of indigent defense, ACLU staff went to David Ewer and expressed disappointment and concern. He said it is in his mind an entitlement and must be funded and that he did not trust numbers from the court administrator's office. We have also discussed the issue with Hal Harper of the Governor's staff who has essentially told us to be happy to get it funded and come back with a supplemental.

$10.6 million current costs

The figures currently in the fiscal note represent the current expenditures for indigent defense by all government entities and are the basis for the new PD system's continuing costs going forward. However, these figures are inadequate and merely shift the current expenditures for indigent defense to the new state system without further analysis or significant increase. As a result, none of the deficiencies that stem for poor funding of the current system will be remedied under the new system.

Why Current **State funding** of indigent defense is inadequate:

- This figure is considered the actual state cost of indigent defense for FY 2004. The figure includes state expenditures for felonies, Juvenile cases, abuse and neglect cases and mental health commitments.
- Public defender offices and contract programs are understaffed, often have unmanageably high caseloads, and do not have access to or underutilize investigators, expert witnesses, and support staff.
- The figure **assumes no increase** in the number or compensation of lawyers assigned to cases by judge or working under a contract. It also assumes no increase in necessary support and professional staff.
- This figure simply enshrines the substandard practice of public defender systems around the state.

Why Current **County Funding** of indigent defense is inadequate:

District Courts:

This $600,000 plus aggregate figure represents money, paid by 6 county public defender offices for district court cases (not including felonies), but NOT reimbursed by the state. The figure was self-reported by 6 of the current chief public defenders during telephone calls with the fiscal analyst. The chiefs did not break out what the money was spent on. The figure has not been audited.

Misdemeanors in Justice Courts:

This $1,040,000 figure for misdemeanor representation is both insufficient and wholly unreliable. It is insufficient because it purports to be the cost of representation for misdemeanors in Montana's justice courts. However, most Montana justice courts provide **little or no representation** for most of the indigent people charged with misdemeanors in defiance of U.S. Supreme Court mandate. Assuming that the new public defender system will provide counsel for all eligible indigents charged with misdemeanors, this number will increase significantly. (Projecting justice court

expenditures on indigent defense to be **$8,000,000** based upon the 48,000 justice court criminal cases filed in 2003 and assuming an 80% indigency rate). Furthermore, the $1M figure is unreliable because it was based on a survey conducted by MACO. The MACO figures have not been audited.

Existing problems that will not be remedied unless the funding of indigent defense services is increased:

- The failure of the State and Counties to adequately fund indigent defense services has resulted in woefully inadequate resources for indigent defense.

- Public defender offices are under-resourced. For example, as of June 2004, nine attorneys in the Missoula County Public Defender Office had to share one investigator, one paralegal and three secretaries.

- Public defenders who provide indigent defense services pursuant to a contract or are assigned by the judges are under-resourced. These lawyers must often pay for their own training, office overhead, computers, software, telephones, photo copying, secretarial and paralegal assistance. As a result, few attend criminal justice training; some do not have secretaries, some do not have computers.

- The Appellate Defender is under-resourced. The office is staffed by a Chief Defender, a deputy appellate defender and a paralegal. In recent years, the Office has had to turn down handling appeals because their office has been inadequately staffed. However, the trial lawyers have not been handling appeals for their clients on a consistent basis – in fact, no one has. The trial lawyers are often too busy or ill-trained in appellate work to protect their client's constitutional rights in the appellate process. Clients find that their rights to appeal have been "waived" without their knowledge or consent. In a series of cases over the last several years, the Montana Supreme Court has granted indigent clients the ability to file appeals "out of time" because their trial lawyers simply abandoned them in during appellate process.*

* HB 392, which passed the house and is in appropriations, proposes changes in existing law "All grounds for relief, whether raised in the original or an amended original petition, must be raised within the time period allowed for the filing of the petition under 46-21-102.

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 4
DATE 3-18-05
BILL NO. SB 146

Amendments to Senate Bill No. 146
2nd Reading Copy

Requested by Senator Corey Stapleton

For the Senate Finance and Claims Committee

Prepared by Taryn Purdy
March 17, 2005 (7:30am)

1. Page 8, line 19.
Following: "defender."
Insert: "The office must be located in Butte, Montana."

- END -

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 5
DATE 3-18-05
BILL NO. SB 146

Amendments to Senate Bill No. 146
2nd Reading Copy

Requested by Senator John Esp

For the Senate Finance and Claims Committee

Prepared by Taryn Purdy
March 15, 2005 (2:38pm)

1. Page 88, following line 9.
Insert: "(6)(a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services in [this act] for the same time period.

(b) The results of the comparison must be presented to the governor, legislative finance committee, law and justice interim committee, and supreme court by September 1 of the following fiscal year."
Renumber: subsequent subsection

- END -

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

FINANCE AND CLAIMS

DATE May 18, 2005

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MIKE COONEY (D), CHAIRMAN			
SEN. TRUDI SCHMIDT (D), VICE CHAIRWOMAN			
SEN. KEITH BALES (R)			
SEN. GREGORY BARKUS (R)			
SEN. JOHN BRUEGGEMAN (R)			
SEN. JOHN COBB (R)			
SEN. JOHN ESP (R)			
SEN. STEVE GALLUS (D)			
SEN. KEN HANSEN (D)			✓
SEN. BOB HAWKS (D)			
SEN. BOB KEENAN (R)			
SEN. RICK LAIBLE (R)			
SEN. LANE LARSON (D)			
SEN. GREG LIND (D)			
SEN. DON RYAN (D)			
SEN. COREY STAPLETON (R)			
SEN. JON TESTER (D)			
SEN. DAN WEINBERG (D)			
SEN. CAROL WILLIAMS (D)			
TARYN PURDY, LSD			
PRUDENCE GILDROY, COMMITTEE SECRETARY			

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

FINANCE AND CLAIMS

DATE 3-18-05 **BILL NO.** SB 146 **NUMBER** 14-5 carries

MOTION SB0146I7.aV1

1-166 168 to end (167 segregated)

NAME	AYE	NO
SEN. MIKE COONEY (D), CHAIRMAN	✓	
SEN. TRUDI SCHMIDT (D), VICE CHAIRWOMAN	✓	
SEN. KEITH BALES (R) P		✓
SEN. GREGORY BARKUS (R)	✓	
SEN. JOHN BRUEGGEMAN (R)	✓	
SEN. JOHN COBB (R)	✓	
SEN. JOHN ESP (R)	✓	
SEN. STEVE GALLUS (D)	✓	
SEN. KEN HANSEN (D) P	✓	
SEN. BOB HAWKS (D)	✓	
SEN. BOB KEENAN (R) P		✓
SEN. RICK LAIBLE (R)	✓	
SEN. LANE LARSON (D)	✓	
SEN. GREG LIND (D)		✓
SEN. DON RYAN (D)	✓	
SEN. COREY STAPLETON (R)		✓
SEN. JON TESTER (D)	✓	
SEN. DAN WEINBERG (D)	✓	
SEN. CAROL WILLIAMS (D)		✓
	14	5

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

FINANCE AND CLAIMS

DATE 3-18 **BILL NO.** SB 146 **NUMBER** 10-9 carries

MOTION SB014601.atp

NAME	AYE	NO
SEN. MIKE COONEY (D), CHAIRMAN	✓	
SEN. TRUDI SCHMIDT (D), VICE CHAIRWOMAN		✓
SEN. KEITH BALES (R)		✓
SEN. GREGORY BARKUS (R)	✓	
SEN. JOHN BRUEGGEMAN (R)	✓	
SEN. JOHN COBB (R) P		✓
SEN. JOHN ESP (R)	✓	
SEN. STEVE GALLUS (D)	✓	
SEN. KEN HANSEN (D) P		✓
SEN. BOB HAWKS (D)		✓
SEN. BOB KEENAN (R)	✓	
SEN. RICK LAIBLE (R)	✓	
SEN. LANE LARSON (D)		✓
SEN. GREG LIND (D)	✓	
SEN. DON RYAN (D)		✓
SEN. COREY STAPLETON (R)	✓	
SEN. JON TESTER (D)		✓
SEN. DAN WEINBERG (D)		✓
SEN. CAROL WILLIAMS (D)	✓	
	10	9

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

FINANCE AND CLAIMS

DATE 3-18-05 **BILL NO.** SB 146 **NUMBER** 17-2 Pass

MOTION SB 146 Do Pass as Amended

NAME	AYE	NO
SEN. MIKE COONEY (D), CHAIRMAN	✓	
SEN. TRUDI SCHMIDT (D), VICE CHAIRWOMAN	✓	
SEN. KEITH BALES (R)	✓	
SEN. GREGORY BARKUS (R)	✓	
SEN. JOHN BRUEGGEMAN (R)	✓	
SEN. JOHN COBB (R)	✓	
SEN. JOHN ESP (R)	✓	
SEN. STEVE GALLUS (D)	✓	
SEN. KEN HANSEN (D) P	✓	
SEN. BOB HAWKS (D)	✓	
SEN. BOB KEENAN (R) P		✓
SEN. RICK LAIBLE (R)	✓	
SEN. LANE LARSON (D)	✓	
SEN. GREG LIND (D)	✓	
SEN. DON RYAN (D)	✓	
SEN. COREY STAPLETON (R)		✓
SEN. JON TESTER (D) P	✓	
SEN. DAN WEINBERG (D)	✓	
SEN. CAROL WILLIAMS (D)	✓	
	17	2

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

FINANCE AND CLAIMS

DATE 3-18-05 BILL NO. _____ NUMBER 13-6 carried

MOTION Committee bill to amend 307 carry forward for two years

NAME	AYE	NO
SEN. MIKE COONEY (D), CHAIRMAN	✓	
SEN. TRUDI SCHMIDT (D), VICE CHAIRWOMAN	✓	
SEN. KEITH BALES (R)		✓
SEN. GREGORY BARKUS (R)		✓
SEN. JOHN BRUEGGEMAN (R)	✓	
SEN. JOHN COBB (R)		✓
SEN. JOHN ESP (R)		✓
SEN. STEVE GALLUS (D)	✓	
SEN. KEN HANSEN (D) P	✓	
SEN. BOB HAWKS (D)	✓	
SEN. BOB KEENAN (R)		✓
SEN. RICK LAIBLE (R)		✓
SEN. LANE LARSON (D)	✓	
SEN. GREG LIND (D)	✓	
SEN. DON RYAN (D)	✓	
SEN. COREY STAPLETON (R)	✓	
SEN. JON TESTER (D)	✓	
SEN. DAN WEINBERG (D)	✓	
SEN. CAROL WILLIAMS (D)	✓	

PROXY VOTE

I, the undersigned, hereby authorize Senator Schmidt to vote my proxy on any issue before the Senate Finance Committee held on Mar 18, 2005.

SB146 Amendment 14617.AVL - YES	SB146 14601.ATP NO	SB146 14603.Atp YES	SB 146 YES	Committee YES

Ken Hanson
SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator Schmidt to vote my proxy on any issue before the Senate Finance Committee held on March 18, 2005.

SB146
YES

Committee BUI
YES

SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator Schmidt to vote my proxy on any issue before the Senate Finance Committee held on March 18, 2005.

ND - Stoebert
yes - Esp
yes - bull

Bob

SENATOR
STATE OF MONTANA

MONTANA STATE SENATE
2005 LEGISLATURE

VISITOR REGISTER

FINANCE AND CLAIMS

DATE 3-18-05 **BILLS BEING HEARD TODAY** SB 477 HB44

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Michael W Schaefer	258-3288	Missoula County	SB477	X	
Dale Pickell	258-4229	Missoula County	SB477	X	
MIKE MCMEEKIN	258-3305	Missoula County	SB 477	X	
Anne Hughes	258-4229	Missoula County	SB477	X	
Bill Auke	771-6002	MSDB	HB44	X	
Linda Stoltz	721-1368	MISSOULA COUNTY	SB477	✓	
Jon Kinnaman	442-1192	AFSCME	SB 477	✓	
Pete Pinsoneault	442-1192	AFSCME	SB 477	✓	
Lg Williams	444-3904	MDOC	SB477		
Pat Smith	846-1320	MDOT	SB 477		

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Budget redux 2.xls3/9/2005

	A	B	C	D	E	F
1	**Commission Expenses**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
2		Meeting Costs	$ 3,300.00	$ 3,300.00	$ 1,650.00	11 commissioners (per national standard: 9-13 commissioners) meeting six times in Year 1($350 per diem); 3 meetings (Year2)
3		Administrative Staff (1 FTE @ $38K)	$ 38,000.00	$ 38,000.00	$ -	Commissioners will need staff during hiring process and initial start-up; Past Superintendent dictates person will stay on for Year 1
4		Conference calls	$ 3,000.00	$ 3,000.00	$ 1,500.00	Even with 6 in person meetings, there will be a significant need for extensive calls during ramp up period in Year 1
5		Travel Costs	$ 1,500.00	$ 1,500.00	$ 750.00	Estimate based on experience; some commissioners will live in area; others will need to travel from around state to 6 meetings
6	$ 25,800.00	*Sub-Total*	*$ 45,800.00*	*$ 45,800.00*	*$ 3,900.00*	*Majority of cost is temporary staff in Year one. As anticipated in Bill, actual costs for commission will decline once system is running*
7	**Exempt Staff**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
8		Chief Public Defender	$ 81,251.28	$ 60,938.46	$ 85,683.82	Probably a bit overstated for MT. Should be on Par with AG salary; used national Chief PD salary information; (Year 1: 9 months)
9		Director of Administration	$ 55,023.08	$ 28,011.54	$ 57,705.77	Used comparable info from New Mexico and Wyoming; Note: AG comparable position looks to be $78k (Year 1: 6 months))
10		Contract Manager	$ 45,323.08	$ 23,611.54	$ 44,519.77	Oversee Contract drafting, solicitation, selection and monitoring for state; $ based on NM position, (Year 1: 6 months)
11		Director of Training	$ 71,000.00	$ 35,500.00	$ 73,130.00	Oversee the design, implementation of trial advocacy & other trainings, including retention of in-state & out-of state faculty; $ based on NM (Year 1:6 months)
12		Chief Appellate Defender	$ 71,000.00	$ -	$ 73,130.00	Probably overstated for MT; Trying to get Chad's current salary; Opted for national average; Bill does not have Appellate part of system until FY2007
13		Chief Deputy Defender (Performance Quality Control)	$ 71,000.00	$ 35,500.00	$ 73,130.00	Chief responsible for "external" duties - legislative education/lobbying, media relations, etc. Deputy responsible for maintaining quality assurance of staff/assigned counsel
14		Director of Information Technology	$ 48,500.00	$ 24,250.00	$ 49,955.00	
15		*Sub-Total*	*$ 421,097.44*	*$ 205,811.54*	*$ 433,237.36*	*FY 2007 assumes a 3% cost of living advancement*
16	**Exempt Staff Benefits**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
17		Calculated at 17% of salaries	$ 75,139.56	$ 34,987.96	$ 77,395.75	Throughout document, NLADA assumes this figure for Benefits (health, retirement, etc.) WY & NM both do not breakout their budgets in this fashion. This number is based on experience in the field
18	**Non-Exempt Staff (Central Office)**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
19		Admin. Assistant (Chief and Dep. Chief)	$ 27,000.00	$ 9,000.00	$ 27,810.00	Based on WY & NM budgets (Year 1: 4 months)
20		Admin. Assistant (Dir. Of Admin)	$ 27,000.00	$ 9,000.00	$ 27,810.00	Based on WY & NM budgets (Year 1: 4 months)
21		Admin. Assistant (Training Chief)	$ 27,000.00	$ 9,000.00	$ 27,810.00	Based on WY & NM budgets (Year 1: 4 months)
22		Legal Secretary (Appeals 1)	$ 24,000.00	$ -	$ 24,720.00	National Standards call for 1 legal secretary for every four attorneys; the appellate defender currently lacks any legal secretarial support; One incumbent up for this current lack for current staff. The second is for additional new attorneys. (Neither
23		Legal Secretary (Appeals 2)	$ 24,000.00	$ -	$ 24,720.00	
24		Snr. Mental Health Attorney (Statewide)	$ 55,000.00	$ -	$ 56,650.00	Considering the expectation that the DP system will handle a lot of civil cases, NLADA believes it is crucial to have one expert in the central office to help the field with mental health issues. Salary Based on NM (Year 1: 4 Months)
25		Snr. Mitigation Expert (Statewide)	$ 55,000.00	$ -	$ 56,650.00	MT needs considerable improvement in mitigation expertise, As with Mental Health, this person would assist field staff throughout state as needed.
26		Snr. Appellate Attorney 1	$ 55,000.00	$ -	$ 56,650.00	MT's appellate defender is critically underfunded with the current staff of lawyers. On top of this, NLADA believes that the increased trial advocacy training will increase the number of direct appeals and post-conviction cases. Though we strongly advoc
27		Snr. Appellate Attorney 2	$ 55,000.00	$ -	$ 56,650.00	
28		Snr. Appellate Attorney 3	$ 55,000.00	$ -	$ 56,650.00	
29		Jnr. Appellate Attorney 1	$ 45,000.00	$ -	$ 46,350.00	
30		Jnr. Appellate Attorney 2	$ 45,000.00	$ -	$ 46,350.00	
31		Jnr. Appellate Attorney 3	$ 45,000.00	$ -	$ 46,350.00	
32		Fiscal Processing (vouchers 1)	$ 33,903.00	$ 11,301.00	$ 34,920.09	Every state that has a centralized state system that oversees voucher payments has and requires fiscal processors (national standards require that oversight be removed from the courts). Given the current number of counties using assigned counsel and base
33		Fiscal Processing (vouchers 2)	$ 33,903.00	$ 11,301.00	$ 34,920.09	
34		Fiscal Processing (vouchers 3)	$ 33,903.00	$ 11,301.00	$ 34,920.09	
35		Fiscal Processing (contracts 1)	$ 33,903.00	$ 11,301.00	$ 34,920.09	Posting, soliciting, oversight, processing and payment on contracts will require staff for the state Contract manager. Again, based on national expectations and NM salary structure, NLADA projects that 2 staffers will be needed. (Year 1: 4 months)
36		Fiscal Processing (contracts 2)	$ 33,903.00	$ 11,301.00	$ 34,920.09	
37		Fiscal Processing (experts)	$ 33,903.00	$ 11,301.00	$ 34,920.09	A single processor is needed to handle review and payment of expert witnesses fees, psychiatrist, etc. (Year 1: 4 months)
38		Paralegal 1 (Housed Regionally)	$ 27,000.00	$ 9,000.00	$ 27,810.00	Contract and assigned counsel attorneys lack proper support staff services in compliance with all national standards. Though four paralegals seem unbelievable, contract and/or assigned counsel attorneys is too few, we believe four are necessary to show attorn
39		Paralegal 2 (Housed Regionally)	$ 27,000.00	$ 9,000.00	$ 27,810.00	
40		Paralegal 3 (Housed Regionally)	$ 27,000.00	$ 9,000.00	$ 27,810.00	
41		Paralegal 4 (Housed Regionally)	$ 27,000.00	$ 9,000.00	$ 27,810.00	
42		Snr. Information Technology Staff 1	$ 45,378.00	$ 14,459.33	$ 44,679.54	We believe five technology staff is the minimum that MT must have to ensure that all technology related issues are met throughout the state. Anticipated work includes troubleshooting servers, computers and software throughout the state, including data col
43		Snr. Information Technology Staff 2	$ 43,378.00	$ 14,459.33	$ 44,679.54	
44		Jnr. Information Technology Staff 1	$ 33,903.00	$ 11,301.00	$ 34,920.09	
45		Jnr. Information Technology Staff 2	$ 33,903.00	$ 11,301.00	$ 34,920.09	
46		Jnr. Information Technology Staff 3	$ 33,903.00	$ 11,301.00	$ 34,920.09	
47		*Sub-Total*	*$ 1,032,885.00*	*$ 393,627.67*	*$ 1,070,049.49*	*All non-management positions will not be hired until after management is brought on board. Anticipate that this will happen in Month 6.*
48	**Non-Exempt Staff Benefits (Central Office)**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
49		Calculated at 17% of salaries	$ 176,610.11	$ 32,916.70	$ 181,908.41	
50	**Training Budget**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
51	$ 102,528.00	Associated Training Costs	$ 50,000.00	$ 3,000.00	$ 54,500.00	Training Director will not be able to be hired and plan trainings for Year 1. Year two includes two statewide trainings (rural, faculty, etc.)
52	**Existing Services (Regional Offices)**		**FY 2006 (Full year)**	**FY 2006 (pro-rated Implementation)**	**FY 2007**	**NOTES**
53		From Report	$ 8,100,000.00	$ 8,100,000.00	$ 8,343,000.00	This is taken from Harry's report. We assumed a three percent increase in costs even if nothing changed in FY2007

Budget recap 2.xls3/9/2005

	A	B	C	D	E	F
54	New Staff (Regional Offices)		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
55		Attorneys (10 @ $45k)	$ 450,000.00	$ 150,000.00	$ 463,500.00	National Standards call for 1 legal secretary for every four attorneys; one investigator for every three attorneys. The standards also call for one social
56		Investigators (15 @ 35k)	$ 525,000.00	$ 175,000.00	$ 540,750.00	worker for every three attorneys, but believe that it may be too impossible to get that accepted in
57		Paralegals (15 @ 27k)	$ 405,000.00	$ 135,000.00	$ 417,150.00	
58		Alternative Sentencing Advocate (5 @ 35k)	$ 525,000.00	$ 175,000.00	$ 540,750.00	
59		Legal Secretaries (10 @ 24k)	$ 240,000.00	$ 80,000.00	$ 247,200.00	
60		Data Entry Clerks (17 @ $24k)	$ 408,000.00	$ 136,000.00	$ 420,240.00	
61		*Sub-Total*	$ 2,553,000.00	$ 851,000.00	$ 2,629,590.00	
62	New Staff Benefits (Regional Offices)		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
63		Calculated at 17% of salaries	$ 434,010.00	$ 144,670.00	$ 447,030.30	
64	Contract Services		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
65		Contract Services For Attorneys (Expanded Services)	$ 4,000,000.00	$ 4,000,000.00	$ 4,120,000.00	Increase to lower caseload and increase services to juvenile and misdemeanor cases.
66		Contract Services For Experts (professional & non-professional)	$ 1,800,000.00	$ 1,800,000.00	$ 1,854,000.00	Figure is from NM budget. It does not reflect the requested amount which is significantly higher.
67		Compensation for Related Expenses	$ 400,000.00	$ 400,000.00	$ 412,000.00	
68		*Sub-Total*	$ 6,200,000.00	$ 6,200,000.00	$ 6,386,000.00	
69	Other Contract Services		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
70		Consulting Services (immigration lawyer, hotels)	$ 10,000.00	$ 10,000.00	$ 10,300.00	Please Note: We believe this number should be significantly higher as the fledgling Commission system will need considerable input from national organizations (leadership training, enplementation consulting, etc.) Because of conflict of interest (NLADA
71	Operations		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
72		Mail & postage	$ 50,000.00	$ 50,000.00	$ 51,500.00	All figures based on WY & NM budgets
73	$ 30,000.00	office furniture	$ 30,000.00	$ 30,000.00	$ 15,000.00	
74		office supplies	$ 80,000.00	$ 80,000.00	$ 60,000.00	
75		janitorial services	$ 10,000.00	$ 10,000.00	$ 10,300.00	
76		Equipment Rental	$ 150,000.00	$ 150,000.00	$ 154,500.00	These figures include upgrade for Xerox machines, postage machines, etc.
77		Equipment Purchase (scanners, digital camera, facsimile, cell phone)	$ 50,000.00	$ 50,000.00	$ 15,000.00	The entire state system needs considerable improvements with all technologies to assist investigators and attorneys. This category does not include computers (listed separately below)
78		Utilities	$ 50,000.00	$ 50,000.00	$ 51,500.00	Based on WY as most comparative for heating, lights, etc. other categories based on WY & NM and NLADA's experience with other jurisdictions. We di
79		Maintenance	$ 25,000.00	$ 25,000.00	$ 25,750.00	
80		printing costs	$ 12,500.00	$ 12,500.00	$ 12,875.00	
81		telephone costs	$ 375,000.00	$ 375,000.00	$ 200,000.00	
82		Transportation (vehicle rental pool/purchase)	$ 90,000.00	$ 90,000.00	$ 92,700.00	
83	$ 100,000.00	Lease holds (rent, buildings, land)	$ 1,400,000.00	$ 1,400,000.00	$ 1,442,000.00	
84		Advertisement (hiring)	$ 3,000.00	$ 3,000.00	$ 1,500.00	System will need place hiring adds in newspaper, professional journals, etc.
85		*Sub-Total*	$ 2,325,500.00	$ 2,325,500.00	$ 2,132,625.00	
86	Travel		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
87		In-state	$ 100,000.00	$ 100,000.00	$ 103,000.00	Includes: gasoline for leased/owned vehicles, etc., based on NM & WY budget numbers
88		Out-of-state	$ 8,000.00	$ 8,000.00	$ 8,240.00	Assumes travel for national training events, plus limited travel for case investigation.
89	$ 3,884.00	*Sub-Total*	$ 108,000.00	$ 108,000.00	$ 111,240.00	
90	Information Technology		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
91		Upgrade	$ 50,000.00	$ 50,000.00	$ -	NLADA does not have a current inventory of computer equipment for the entire state. Our site visit dictate that there will need to be a serious upgrade in
92	$ 27,851.00	New Computers/Printers	$ 100,000.00	$ 100,000.00	$ -	
93	$ 512,000.00	Case management/licenses	$ 850,000.00	$ 850,000.00	$ -	Based on NM's case-tracking/data collection experience
94		*Sub-Total*	$ 1,000,000.00	$ 1,000,000.00	$ -	
95	Other		FY 2006 (Full year)	FY 2006 (pro-rated Implementation)	FY 2007	NOTES
96		Insurance	$ 50,000.00	$ 50,000.00	$ 51,500.00	Based on NLADA insurance program estimates for malpractice/risk assessment. We do not know if MT self-insures. System may need insurance for injury, etc. -- Need further research
97		Bar Licenses	$ 180,000.00	$ 180,000.00	$ 185,400.00	Most good indigent defense systems pay bar dues for employees. We do not know current MT practice, but encourage that this benefit be offered to employees as an inducement to stay. Estimates are based on NM's budget.
98		Membership & Dues	$ 3,000.00	$ 3,000.00	$ 3,000.00	Cost for statewide membership on NLADA
99		Audit Services	$ 22,000.00	$ 22,000.00	$ 22,660.00	Again, we do not know if this is required by MT government or not. Most programs require some sort of annual financial audit.
100		CLE	$ 8,000.00	$ 8,000.00	$ 8,240.00	Employee benefit
101		*Sub-Total*	$ 263,000.00	$ 263,000.00	$ 270,800.00	
102	TOTAL		$ 21,851,940.11	$ 19,518,313.97	$ 22,175,594.31	

FISCAL NOTE

Bill #: SB0146 **Title:** Statewide public defender system

Primary Sponsor: McGee, D **Status:** As Amended in Senate Committee

Sponsor signature Date David Ewer, Budget Director 3/22/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$916,350	$2,989,912
State Special Revenue	$0	$0
Proprietary	$55,000	$25,000
Revenue:		
General Fund	$0	$0
State Special Revenue	$0	$0
Proprietary	$55,000	$25,000
Net Impact on General Fund Balance:	($916,350)	($2,989,912)

☒	Significant Local Gov. Impact	☐	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☒	Dedicated Revenue Form Attached	☒	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Office of the Chief Public Defender - New Office Costs

1. The function is administratively attached to the Department of Administration, but will be an independent office and held out as a new state agency.
2. There will be a change in the local government entitlement share payment law to compensate the state for local government's share of the costs of the statewide public defender system.
3. A legislative audit will be done to determine the funding responsibilities for certain counties so their share can be based on actual costs.
4. The Public Defender Commission will be appointed by June 1, 2005.
5. The commission will appoint the Chief Public Defender by September 1, 2005. The salary and benefits for the position are $71,298 in FY 2006 and $95,064 in FY 2007.
6. The chief fills all positions by the end of FY 2006, with key positions needed to administer the office hired throughout FY 2006 per below:
   a. Administrative director – annual salary and benefits - $65,547 – 50 percent in FY 2006

SB 146 #3

b. Assistant Public Defenders – 2.00 FTE with total salary and benefits of $131,094 – 25 percent in FY 2006
c. Financial Manager - annual salary and benefits of $50,571 – 50 percent in FY 2006
d. Contract managers – 2.00 FTE with total salary and benefits of $101,502 – 25 percent in FY 2006
e. Administrative Support – 2.00 FTE with total salary and benefits of $68,571
f. Accountant – annual salary and benefits - $50,751 – 25 percent in FY 2006
g. Accounting Technicians – 3.00 FTE with total salary and benefits of $119,721 – FY 2007 only
h. Indigence determination specialists – 5.00 FTE with total salary and benefits of $199,935 – FY 2007 only
i. Information tech analysts – 2.00 FTE with total salary and benefits of $101,502 – 25 percent FY 2006

7. The existing appellate defender operating budget is increased 4 fold to handle an increased caseload with current FTE. This legislation creates an office of appellate defender and a chief appellate defender hired by the chief public defender. The operating budget is increased by $192,290 in FY 2006 and $769,160 in FY 2007.
8. Operating Costs are assumed for partial office operation in FY 2006 and fully fund the office in FY 2007:
   a. Rent - $25,956 in FY 2006 and $98,880 in FY 2007
   b. Data network charges - $4,709 in FY 2006 and $17,947 in FY 2007.
   c. Furniture -- $30,900 in FY 2006.
   d. Personal computers - $27,831 in FY 2006
   e. Processing services -- $16,055 in FY 2006 and $61,158 in FY 2007.
   f. Job classifications for new and transferred staff - $30,000 in FY 2006.
   g. Travel -- $1,442 in FY 2006 and $2,884 in FY 2007.
   h. Fixed costs - $13,519 in FY 2006 and $51,500 in FY 2007.
   i. Training -- $102,528 in FY 2007.
   j. Commission meetings and travel equal $25,000 in FY 2006 and $15,000 in FY 2007.
   k. DoA support costs – payroll $25,000 each year.
   l. Information technology – FY 2006 includes $20,000 for a needs assessment. FY 2007 includes $428,000 for the purchase of a case management system (NM system) and $64,200 for maintenance.

Current costs in District Court Assumption Transferred to Office:

9. Appointed attorneys – estimated cost of $5,122,378 in FY 2007.
10. County Public Defender staff – In FY 2007, 40.00 FTE attorneys and 22.75 FTE support staff will be transferred from the county offices to the state. Estimated personal services cost amount to $1,846,863 in FY 2007.
11. Contracted attorney costs are estimated to total $619,056 in FY 2007.
12. Private investigator costs are assume to be $216,978 in FY 2007
13. Witness fees that will transfer to the Office of the Chief Public Defender are assumed to be $153,443.
14. Legal fees and other court costs that will transfer to the Office of the Chief Public Defender are assumed to be $134,717.
15. The Judicial Branch will transfer 1.50 FTE to the Office of the Chief Public Defender effective July 1, 2007 per below:
    a. One Accounting Technician at annual salary and benefits of $28,595
    b. One half-time Administrative Assistant at annual salary and benefits of $15,130.

Other County Public Defender Costs transferred to State of Montana

16. Justice court costs assumed by the state are estimated to total $1,040,000 in FY 2007 (MaCO survey)
17. City and municipal court costs transferred to the state are estimated to be $737,546 in FY 2007.

18. County funded office costs not reimbursed by the District Court Council are estimated to be $674,157.
19. All costs reduced from the entitlement share allocation have been inflated at rates consistent with other entitlement share growth. This brings the total reduction of entitlement share allocations to $2,559,141 in FY 2007.
20. A legislative audit will be conducted to determine actual costs, please refer to the Legislative Audit assumptions for further discussion.

Department of Administration

21. The Department of Administration will provide human resource services to the office. This fiscal note assumes classification costs to cover new and existing employees to the state system will total $30,000 in FY 2006. Ongoing payroll processing costs are estimated at $25,000 each year and require an additional 0.25 FTE per year with offsetting proprietary revenues.

Costs associated with representation for indigent parents in child abuse and neglect cases - new

22. These new costs would be incurred in the newly created Office of the Public Defender.
23. The Judiciary used case filing data for cases filed pursuant to 41-3-422, MCA, from the first 6 months of FY 2004 and doubled the filings to estimate a full fiscal year.
24. Currently the 1st, 2nd, 4th, 13th, 14th, 18th, 21st and 22nd Judicial Districts as well as some counties in the 7th and 12th Judicial Districts appoint counsel immediately. The cost in FY 2004 for public defender representation of the parents in these cases was $533,213. There were 241 filings in the first 6 months of FY 2004 in these districts. The average cost per case was $1,106. $533,213/(241 x 2).
25. The cost in FY 2004 for public defender representation of the parents in Judicial Districts, which don't appoint counsel immediately, was $279,360. There were 221 cases filed in the first 6 months of FY 2004 in the Judicial Districts where counsel was appointed at either the adjudication or dispositional hearing stage of the process. The average cost per case was $632. $279,360/(221x2).
26. The total increased cost is estimated at $209,508 per year. ($1,106-$632) x (221x2).
27. Assumptions are base on work done by the Legislative Fiscal Division and the Legislative Services Division for the Law and Justice Interim Committee in preparation for submission of this bill. The Office of the Court Administrator and the Department of Administration compiled additional information.

Department of Corrections

28. The proposed statewide public defender system would absorb the costs DOC currently spends on inmate public defender services for the prosecution of crimes committed in prison.
29. These costs also include expert witnesses, psychological exams and transcripts. In FY 2004, these expenses totaled $50,141.67.
30. It is assumed that the base budget in the DoC will transfer to the Public Defender Office in FY 2007 to offset costs associated with the new responsibility.

Legislative Audit

31. In accordance with section 2-7-504, MCA, the named counties are conforming to the rules of accounting for the receipt and disbursement of all money belonging to the local government.
32. Fiscal years 1999 through 2004 public defender expenditure records of each county named are readily available for both district and justice court proceedings (emphasis added).
33. The audit hours for each of fiscal year 2003 and 2004 financial audits required by the state single audit act for the five named counties averaged 720 hours per audit.
34. The average billing rate for the fiscal year 2003 and 2004 financial audit services required by the state single audit act for the named counties was $60 per hour.
35. To the extent that these expenditures were included in the annual audits of the counties, the audit requirement under section 74(2) will rely on the audit results of the annual audits under the state single audit act.

36. These audits are special purpose claims reviews of the actual costs as defined in legislation, for public defender services in justice and district courts that were not reimbursed by the office of court administrator.
37. The legislative auditor will contract for the audit services.
38. Due to the reporting deadline of April 30, 2006, we will use a limited solicitation for contracted services and anticipate 75 hours at $54 per hour for preparation of bid specifications, or $4,050.
39. The legislative auditor will provide administrative support for contract arrangements, not to exceed 25 hours per county at a rate of $54 per hour, paid by the contractor.
40. Contract payments will be made directly to the contractor by the county for actual audit services rendered.
41. At 75 hours of audit effort per fiscal year under review, the six year audit period requires 450 audit hours at a rate of $60 per hour, or $27,000 per county.
42. The legislative auditor will spend 40 hours compiling the results of the audit work at $54 per hour to meet the reporting requirement, or $2,160.
43. The counties will pay for the costs of the preparation of bid specifications, audit costs, and report compilation costs as estimated above.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Public Defender Office - New		
FTE	5.50	84.25
Expenditures:		
Personal Services	294,140	2,874,486
Operating Expenses – Indigent parent	0	209,508
Operating Expenses – Inmate Public Defender Services	0	50,141
Operating Expenses	412,702	10,652,000
TOTAL	$706,842	$13,786,495
Funding of Expenditures:		
General Fund (01)	$706,842	$13,786,495
Department of Administration		
FTE	0.25	0.25
Expenditures:		
Personal Services	25,000	25,000
Operating Expenses	30,000	0
TOTAL	$55,000	$25,000
Funding of Expenditures:		
General Fund (01)	0	0
Proprietary	55,000	25,000
TOTAL	$55,000	$25,000

Fiscal Note Request SB0146, As Amended in Senate Committee
(continued)

Revenues:		
Proprietary (06)	$55,000	$25,000
Judicial Branch		
Supreme Court Operations (01)		
FTE	0.00	(1.50)
Expenditures:		
Personal Services	$0	($43,725)
Funding of Expenditures:		
General Fund (01)	$0	($43,725)
Judicial Branch		
District Court Operations (04)		
Expenditures:		
Operating Expenses	$0	($8,093,435)
Operating Expenses – Indigent parent	209,508	$0
Funding of Expenditures:		
General Fund (01)	$209,508	($8,093,435)
Department of Corrections		
Expenditures:		
Operating Expenses	$0	($50,141)
Funding of Expenditures:		
General Fund (01)	$0	($50,141)
Department of Administration		
Entitlement Offset		
Expenditures:		
Transfers (Entitlement Share Allocation)	$0	($2,559,141)
Funding of Expenditures:		
General Fund (01)	$0	($2,559,141)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	($916,350)	($2,989,912)
State Special Revenue (02)	$0	$0
Proprietary (06)	$0	$0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. The local entities will be required to pay, into a state special revenue account, the accrued sick leave and vacation leave totals for each assumed employee. It is impossible to determine the impact of this but anything paid in will reduce the counties balance sheet liabilities.
2. There will be a legislative audit of 5 counties that will be paid for by these counties. The estimated cost of these audits is estimated to be $141,210 in FY 2006.
3. The currently identified costs associated with justice courts and city and municipal courts will be reduced from the local entity's entitlement share (justice court - $1,040,000 and city/municipal court - $737,546 and county office costs of $674,157) and all costs assumed by the state of Montana.

TECHNICAL NOTES:

1. Section 13. Grants, gifts and donations must be deposited in the state special revenue account; however section 8(12) implies it is federal revenue.
2. This may cause an unfunded mandate for counties to pay additional audit costs per1-2-112, MCA.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 31, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 146, 406, 504, HB 794, 3/24/2005
Executive Action: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked the sponsor to explain the difference between Section 3 and Section 4. **SEN. SHOCKLEY** explained that they each relate to a different Section of the MCA Code.

REP. KOOPMAN spoke with Ms. Baker about the number of attorneys in Montana and the amount of Pro Bono work that is donated by them. They continued to discuss whether or not it would be helpful to have an amendment allowing attorneys to do Pro Bono work without going through MLSA. **Ms. Baker** replied that the attorney would need t go through MLSA to be able to verify and track the numbers of hours they work Pro Bono cases.

REP. NOONAN spoke with the SENATOR about the fiscal note regarding the technical note on Page 2 regarding the waived money.
{Tape: 1; Side: A; Approx. Time Counter: 173 - 310}

Closing by Sponsor:

SEN. SHOCKLEY closed the hearing on SB 406 and stated that the $10 fee increase will go to Montana Legal Services Association and the attorneys will receive a $500 tax credit for during the Pro Bono work.
{Tape: 1; Side: A; Approx. Time Counter: 310 - 327}

HEARING ON SB 146

Sponsor: **SEN. DANIEL MCGEE, SD 29, LAUREL**

Opening Statement by Sponsor:

SEN. DAN MCGEE (R), SD 29, opened the hearing on **SB 146,** Statewide public defender system. **SEN. MCGEE** rose to inform the committee that this bill was brought as the result of a lawsuit that the ACLU filed against the State of Montana for failing to provide legal representation for indigent citizens.

He continued to explain and refer to the exhibits that were distributed to the committee members.
EXHIBIT(juh68a01)
EXHIBIT(juh68a02)
EXHIBIT(juh68a03)

EXHIBIT(juh68a04)
EXHIBIT(juh68a05)
{Tape: 1; Side: A; Approx. Time Counter: 327 - 500}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 40}

Proponents:

SEN. MICHAEL WHEAT, SD 32, BOZEMAN, rose in support of SB 146 and explained to the committee the background of the lawsuit and SB 146. He stated that if this matter is not resolved; the lawsuit will go forward and the trial will start May 31, 2005.
{Tape: 1; Side: B; Approx. Time Counter: 40 - 124}

Gordon Morris, Montana Association of Counties (MACo), rose in support of SB 406 and referred to the exhibits for much of his testimony.
EXHIBIT(juh68a06)
EXHIBIT(juh68a07)
{Tape: 1; Side: B; Approx. Time Counter: 124 - 243}

Pam Bucy, Assistant Attorney General, rose in support of SB 146 and spoke on behalf of Attorney General, Mike McGrath, who postponed the trial so that the Legislature would have a chance to resolve this matter.

She continued to speak about the related expenses from three juvenile murder cases. For instance, in the Bar Jonah case, the defense costs were more than $600,000.

Dave Ewer, Budget Director, State of Montana, rose in support of SB 146 and stated that this Legislature, "...must pass this piece of legislation."
{Tape: 1; Side: B; Approx. Time Counter: 297 - 330}

Ron Waterman, attorney, rose in support of SB 146 and began his testimony about being the lead attorney in the ACLU v. State of Montana since February, 2002.

Mr. Waterman explained that currently there is no accounting being done, no one has been audited. He then spoke about the expense incurred, for instance, if 100 people are sentenced (inappropriately) to the Montana State Prison (MSP) at the rate of $50,000 per year, that is costing the State of Montana, $50 million per year.
EXHIBIT(juh68a08)
{Tape: 1; Side: B; Approx. Time Counter: 243 - 500}

Linda Stoll, Missoula County, rose in support of SB 146 and referred to Page 28, Line 4, regarding the entitlement funding. She is in agreement with MACo's amendment and will welcome the chance for an audit of the funding issues.
{Tape: 2; Side: A; Approx. Time Counter: 0 - 46}

Alec Hanson, Montana League of Cities and Towns, rose in support of SB 146 and spoke to the entitlement shares that are paid in the larger cities, whereas, in the smaller towns, those towns pay nothing.
{Tape: 2; Side: A; Approx. Time Counter: 46 - 70}

Dennis Paxinos, Yellowstone County Attorney, Montana County Attorneys Association, rose in support and stated that this bill may not be going far enough. He stated that the Appellate Court should be separate.
{Tape: 2; Side: A; Approx. Time Counter: 70 - 96}

Bill Hooks, attorney, rose in support of the bill and also spoke in support of the headquarters being located in Helena.
{Tape: 2; Side: A; Approx. Time Counter: 96 - 123}

Chad Wright, State Appellate Office, rose in support of SB 146 and spoke to the committee about the cases where the Montana Supreme Court had ruled that a defendant's legal counsel had been ineffective.
{Tape: 2; Side: A; Approx. Time Counter: 123 - 176}

Randi Hood, Lewis and Clark Public Defender, rose in support of SB 146 and spoke to the committee regarding the provision for people who do not meet the federal levels of poverty and also rose in favor of placing the headquarters in Helena.
{Tape: 2; Side: A; Approx. Time Counter: 176 - 217}

Jacqueline Lenmark, ACLU, spoke to the committee in support of SB 146 and discussed the coordination between the ACLU and the AG office. She did speak to the location of the office as to Butte or Helena.
EXHIBIT(juh68a09)
{Tape: 2; Side: A; Approx. Time Counter: 217 - 289}

Jani McCall, City of Billings, rose in support of SB 146 and spoke to the committee about the public defenders office in Billings. **Ms. McCall** agreed that there must be consistency throughout the state.
{Tape: 2; Side: A; Approx. Time Counter: 289 - 297}

Eric Olson, Cascade County Public Defender, rose in support and spoke to the committee about the positive aspect of the consistency that this bill will provide.
{Tape: 2; Side: A; Approx. Time Counter: 297 - 335}

Charles Brooks, Yellowstone Board of County Commissioners, rose in support of Gordon Morris's amendment.
{Tape: 2; Side: A; Approx. Time Counter: 335 - 340}

Scott Crichton, ACLU, spoke in support of SB 146.
EXHIBIT(juh68a10)
{Tape: 2; Side: A; Approx. Time Counter: 340 - 360}

Opponents' Testimony: None

Informational Testimony:

Bill Penn, Butte-Silverbow Economic Development Office, rose in support of SB 146, especially for the office to be located in the City of Butte. **Mr. Penn** spoke of the low costs to rent, willing labor force and the close availability to Montana State Prison (MSP).
EXHIBIT(juh68a11)
EXHIBIT(juh68a12)
EXHIBIT(juh68a13)
EXHIBIT(juh68a14)
EXHIBIT(juh68a15)
EXHIBIT(juh68a16)
{Tape: 2; Side: A; Approx. Time Counter: 360 - 401}

Questions from Committee Members and Responses:

REP. HARRIS spoke with SEN. MCGEE about the amendment proposed by MACo and the costs being borne by the six largest counties in Montana, etc. **SEN. MCGEE** replied that he would prefer to leave the bill "as is." **REP. HARRIS** and **SEN. MCGEE** discussed the vacation issue as to who would pay the costs for carried over vacation, followed by a discussion as to the "standards" and training that would be required for the public defenders.

REP. EVERETT spoke with the sponsor regarding the attorneys that would be hired by the State.

REP. EVERETT then spoke with Ms. Bucy regarding the minimum standards that would need to be met for these attorneys to provide services through the State.
EXHIBIT(juh68a17)

REP. MCGILLVRAY continued this line of questioning with the sponsor and broached the idea of having an "attorney consortium" of private attorneys that would be able to provide services where there may be a conflict of interest.

REP. KOOPMAN questioned SEN. MCGEE about whether or not this service is even needed. **SEN. MCGEE** responded that the Legislature should not be writing legislation based on the Supreme Court's ruling and that the Supreme Court should not tell the Legislature what they should be doing. He continued to explain how this bill was drafted and the information from other states that was considered in the drafting.

They continued their conversation regarding the training and standardization of the training.

REP. KOOPMAN commented that, in his opinion, public defenders are not always the most "competent" attorneys and wondered if a paralegal would be able to handle some of the cases that an attorney would otherwise handle. **SEN. MCGEE** stated that the interim committee would look at the other levels of legal representation.

REP. GUTSCHE spoke with the sponsor about the situation where the public defenders would become State employees. They continued their discussion as to the federal poverty level and how that would be applicable to indigent Montanans.

REP. GUTSCHE then posed some questions to Ms. Stoll regarding the entitlement payments and audit that Ms. Stoll spoke of in her previous testimony.

REP. NOONAN spoke with the sponsor regarding the location of the office being in Butte. The **REPRESENTATIVE** posed the same question to Ms. Bucy. **Ms. Bucy** replied that the Attorney General does not have a position on that matter.

REP. RICE questioned the SENATOR about what had happened to the bill that was proposed in the 2003 Legislature. **SEN. MCGEE** explained what happened to HB 124 to the committee members and then spoke briefly about the expenses that would be incurred initially for SB 146.
{Tape: 2; Side: A; Approx. Time Counter: 401 - 500}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 198}

Closing by Sponsor:

SEN. MCGEE closed the hearing on SB 146 and spoke to the amendment that was proposed regarding the entitlement issue raised by Ms. Stoll. He continued to address the eligibility criteria that the indigent population would need to meet to receive the services of a public defender. The **SENATOR** also spoke about the training and standardization of the new public defenders.

SEN. MCGEE spoke specifically to Page 85 regarding the "time lines" that the interim committee set forth for the implementation of the statewide public defenders system. He finished his closing by stating, "...this work was not being driven by the lawsuit with the ACLU; the people in the State who do not receive legal representation could have also sued the State without the public defender system in place...."
EXHIBIT(juh68a18)
{Tape: 3; Side: A; Approx. Time Counter: 198 - 500}

HEARING ON HB 794

Sponsor: REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on **HB 794,** Create criminal and civil penalties for violations of the right to know. The **REPRESENTATIVE** explained to the committee that this bill would do two things:

1) It would extend the criminal violation for open meetings violation.
2) It would stop taxpayers from paying for the violation by public officials.

REP. GALLIK continued with his presentation to the committee regarding his proposal to put a "cap" on the amount of awarded settlements and that the public officials of elected official are required to pay for the violation. He concluded by stating that there is an alternative to this bill and then a proposal for a study resolution for HB 794.
{Tape: 3; Side: B; Approx. Time Counter: 0 - 98}

ADJOURNMENT

Adjournment: 12:58 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh68aad0.PDF)

Montana State Legislature

Exhibit Number: 1

The following exhibit is a booklet that exceeds the 5-page limit therefore it cannot be scanned. The booklets' cover has been scanned to help you when requesting information. The exhibit is on file at the Montana Historical Society and can be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton

EXHIBIT 1
DATE 2/3/05
SB 146

For the Defense:

Enacting a Statewide Public Defender System in Montana

A Report to the 59th Legislature

by the

Law and Justice Interim Committee

December 2004

prepared by

Sheri S. Heffelfinger, Research Analyst

Montana Legislative Services Division

State Capitol, Room 110

P.O. Box 201706

Helena, MT 59620-1706

(406) 444-3064

FAX: (406) 444-3036

http://leg.state.mt.us

EXHIBIT 2
DATE 3/31/05
SB 146

BILL SUMMARY: SB 146
MONTANA PUBLIC DEFENDER ACT

By Request of Senator Dan McGee, Bill Sponsor

Prepared by Sheri Heffelfinger, Research Analyst, Bill Drafter
SB 146, 3rd Reading Copy (version SB0146.03)
Updated: March 30, 2005

The meat of the bill is in NEW SECTIONS 1 through 15:

Section 1. **Short Title.** (p. 2)

Section 2. **Definitions.** (p. 2)

Section 3. **Purpose.** (p. 2)

Section 4. **Scope and structure of the state wide public defender system.** (p. 3)

Structure: A public defender commission would supervise the system, develop a strategic plan, divide the state into regions, provide for the delivery of services:
- by contract with a single attorney or law firm or with a consortium of attorneys or law firms; or
- through a regional office with state staff (see section 11)

Scope: Covers all courts (district, justice, municipal, and city courts)
Covers all the cases listed in subsection (4)
- (4)(a) lists cases where a person is entitled to a PD because they are indigent
- (4)(b) lists the cases where a person is entitled to a PD even if not indigent

Section 5. **Public defender commission composition and membership.** (p. 5)

This section provides that a Public Defender Commission of 11 members would be appointed by the governor as follows:
- 2 attorneys nominated by Supreme Court
- 3 attorneys nominated by President of State Bar
  - -- 1 experienced in felony defense and was a full-time PD for at least 1 yr
  - -- 1 experienced in defense of juvenile delinquency and abuse and neglect cases involving the Indian Child Welfare Act
  - -- 1 who represents criminal defense lawyers
- 2 from general public, not attorneys, judges (active or retired)
- 1 nominated by President of Senate
- 1 nominated by Speaker of the House
- 1 advocate for indigent persons

- 1 advocate for racial minorities
- 1 advocate for people with mental illnesses and dev. disabilities
- 1 employed by an organization providing addictive behavior counseling
- 1 with significant experience in defense of criminal or other cases subject to the public defender act who has a strong commitment to quality representation for indigent defendants

Section 6. Commission duties and responsibilities. (p. 6)

This section provides that the Public Defender Commission would:
- hire and supervise a Chief Public Defender
- set statewide standards and policies covering:
  - -- education
  - -- experience
  - -- caseload and workloads
  - -- access to support services (paralegals, investigators, etc)
  - -- continuing education/training
  - -- performance criteria and evaluation
- develop strategic plan and approve budget proposals
- develop process for handling cases presenting conflicts of interests
- ensure process for recording and reporting detailed expenditure and caseload data
- submit a detailed biennial report to the Governor, Supreme Court, and Legislature

Section 7. Office of state public defender, personnel, compensation, expenses. (p. 8)

This section:
- establishes central office
- establishes the structure of the central office
  - -- chief public defender
  - -- administrative director
  - -- chief appellate defender
  - -- chief contract manager
  - -- training coordinator
  - -- deputy public defenders in each region
  - -- assistant public defenders (state staff to assist regions if requested)
  - -- other positions as needed
- lists other types of operational expenses that are paid by the office:
  - -- witness fees
  - -- transcript fees

Section 8. Chief public defender -- duties. (p. 9)

This section:
- outlines the duties of the Chief Public Defender to:
  - -- present to commission a regional strategic plan
  - -- supervise regional deputy public defenders and state staff of assistant public defenders
  - -- ensure conflict cases are handled appropriately
  - -- ensure detailed expenditure and caseload data is kept
  - -- manage caseloads
  - -- establish standards for assigning capital cases consistent with Supreme Court guidelines
  - -- establish and supervise a training program
  - -- establish performance and evaluation criteria
  - -- etc.

Section 9. Office of appellate defender -- chief appellate defender. (p. 10)

This section provides that:
- the Chief Public Defender hires and supervises the chief appellate defender
- the Chief Appellate Defender supervises the Office of Appellate Defender (contacted services and state appellate staff in regional offices)
- the Office of Appellate Defender, not the public defender who handled the original case, would handle all appeals in which the defendant is entitled to a public defender

Section 10. Training program -- coordinator. (p. 11)

This section:
- provides that a centralized training coordinator would be appointed by the Chief Public Defender
- training coordinate would
  - -- coordinate statewide training
  - -- help establish standards
  - -- provide consultation and assistance with research for briefs
  - -- apply for and assists in disbursement of federal funds or other grant money
  - -- perform other duties as assigned

Section 11. Regional offices -- deputy public defenders -- office space. (p. 12)

This section provides that:
- if a regional office is established by the Commission (rather than having contracted services provided for in the region), then the regional office will be managed by a deputy public defender
  - -- there are PD offices in Missoula, Yellowstone, Bozeman, Anaconda-Deer Lodge, Cascade, and Lewis & Clark Counties and one FTE in Dawson County

Section 12. Contracted service program. (p. 12 bottom)

This section:

- authorizes the Office of State Public Defender and each regional deputy public defender to contract for services.
- contracting must be done fairly and consistently throughout the state and within each region.
- places specific parameters on the contracting to ensure:
  - -- that contracts consider attorney qualifications and caseloads
  - -- adequate contract oversight
  - -- contracts aren't awarded based solely on the lowest bid
  - -- that there will be no fixed rate contract (i.e. a set fee no matter the caseload handled).

Section 13. Public defender account. (p. 13)

This section provides that:

- all gifts, grants, or donations to the Office of State Public Defender would be deposited to a special revenue account
- all payments ordered by a court to pay for the cost of defense provided by a public defender would be deposited to the special revenue account

Section 14. Eligibility and determination of indigence. (p. 14)

This section describes the process to be used to determine whether a person is eligible for a public defender.

Under this section:

- the Office of State Public Defender (through the regional offices or through contracted services) will determine whether a person is indigent and eligible for a public defender, or not.

- subsection (3), which begins on page 15, line 4, provides that anyone with a household income at or less than 133% of federal poverty guidelines OR whose disposable income and assets are insufficient to retain competent counsel without substantial hardship will be determined "indigent" and eligible for a public defender.

Section 15. Right to counsel. (p. 18)

This section concerns child abuse and neglect cases:

- consolidates current law and
- changes current law to provide that whenever a charge of child abuse or neglect is filed against a parent, the parent is immediately entitled to counsel (a court would no longer have to wait until a petition for the termination of parental rights has been filed)

Other key sections in the bill

Section 21. Amending 15-1-121. Entitlement share payment -- appropriation. (p. 25)

This section provides the funding mechanism for the Office of State Public Defender.

County and city share of funding: Beginning on **page 26, line 30 through page 33, line 6**, the amount of each county's and cities' entitlement share for FY 2006 will be reduced by the amount shown before the growth factor and entitlement share amount is calculated and paid out for FY 2007. This will permanently reduce the amount of the entitlement share paid to the county's and cities from the general fund.

Audit of certain counties: In order to base entitlement share reduction amounts for the state's largest counties on **actual costs** rather than on estimates, the bill provides that an audit will be conducted of certain county public defender expenses and go back to 1998. The counties to be audited are:

- Cascade
- Gallatin
- Lewis & Clark
- Missoula
- Yellowstone

Amendments:

- SB014608.ash would add Flathead County
- SB014609.ash would have counties share 50% of the cost for the audit

Adjustments next session:

- Law and Justice Interim Committee will offer legislation to adjust the entitlement share reduction amounts according to audit findings and determination of what costs should be state responsibility and what costs should be county responsibility. **(Subsection (5) of Section 72)**

The key language discussing how this audit will be conducted and identifying what expenses will be audited is provided in **Section 72, page 88, beginning on line 22.**

Section 46. Examination of defendant. (pp. 61 - 62)

This section relates to mental examination of a defendant's fitness to proceed. Fitness to proceed may be raised by the prosecution, the defense, or the court. Key language to note is in **subsection (4), beginning on page 61, line 22.**

Section 61. Expense of trial for offenses committed in prison.

Current language:
- Dept. of Corrections pays all costs "incurred by the county" **(page 80, line 24)**

Change in bill:
- Public defender costs will be paid by the Office of State Public Defender

Implementation Sections

Section 68. Implementation

Time line:

Public Defender Commission appointed by	July 1, 2005
Chief Public Defender hired by	December 31, 2005
Standards and Procedures in place by	July 1, 2006

Section 69. Transition -- transfer of county and city employees to state employment

Local public defender staff become state employees	July 1, 2006

Section 70. Transition of appellate defender commission and office

Appellate Defender Commission and Public Defender Commission work together beginning	July 1, 2005
Office of Appellate Defender transferred to Office of State Public Defender and Appellate Defender Commission and old statutes repealed	July 1, 2006

Section 72. Determination of actual costs -- legislative audit (p. 88)

Audit of FY 1998 through FY 2005 "actual costs" for "public defender services" in district court and justice court in the following counties:
- Cascade
- Flathead (would be added by amendment SB014608.ash)
- Lewis & Clark
- Gallatin
- Missoula
- Yellowstone

Section 75. Interim report. (p. 91)

The Public Defender Commission and the Office of State Public Defender must provide a progress report in FY 2007 to:

- Governor
- Legislative Audit Committee
- Legislative Finance Committee
- Law and Justice Interim Committee
- Supreme Court

Section 80. Three-fifths vote required. (p. 92)

A three-fifths vote of the members of each house is required because the entitlement share statutes state that any adjustments to the entitlement share may be done only by a three-fifths vote.

EXHIBIT 8
DATE 3/29/05
SB 146

Amendments to Senate Bill No. 146
3rd Reading Copy

Requested by Senator Dan McGee

For the House Judiciary Committee

Prepared by Valencia Lane
March 29, 2005 (9:26am)

1. Page 25, line 3.
Following: "subsection"
Insert: ", as adjusted pursuant to subsection (3)(a)(i),"

- END -

This amendment makes the entitlement share formula work.

EXHIBIT 4
DATE 3/30/05
SB 146

Amendments to Senate Bill No. 146
3rd Reading Copy

Requested by Senator Dan McGee

For the House Judiciary Committee

Prepared by Sheri Heffelfinger
March 30, 2005 (5:19pm)

1. Page 89, line 13.
Following: "AUDITOR FOR"
Insert: "50% of"

- END -

EXHIBIT 5
DATE 3/31/05
SB 146

Amendments to Senate Bill No. 146
3rd Reading Copy

Requested by Senator Dan McGee

For the House Judiciary Committee

Prepared by Sheri Heffelfinger
March 30, 2005 (5:22pm)

1. Page 88, line 29.
Following: "MISSOULA COUNTY,"
Insert: "Flathead County,"

2. Page 89, line 29.
Following: "MISSOULA COUNTY,"
Insert: "Flathead County,"

- END -

EXHIBIT 6
DATE 3/30/05
SB 146

Amendments to Senate Bill No. 146
3rd Reading Copy

For the House Judiciary Committee

Prepared by Gordon Morris
Montana Association of Counties
March 30, 2005

1. Page 1, line 25.
Following: "requiring a"
Insert: "n"

2. Page 1, line 25.
Strike: LEGISLATIVE

3. Page 27, line 10.
Strike: line 10 in its entirety.

4. Page 27, line 17.
Strike: line 17 in its entirety.

5. Page 27, line 18.
Strike: line 18 in its entirety.

6. Page 27, line 27.
Strike: line 27 in its entirety.

7. Page 28, line 4.
Strike: line 4 in its entirety.

8. Page 28, line 27.
Strike: line 27 in its entirety.

9. Page 33, following line 10.
Insert: " (B) BEFORE APPLYING THE GROWTH RATE FOR FISCAL YEAR 2007 TO DETERMINE THE FISCAL YEAR 2007 ENTITLEMENT SHARE PAYMENTS FOR CASCADE COUNTY, FLATHEAD COUNTY, GALLATIN COUNTY, LEWIS AND CLARK COUNTY, MISSOULA COUNTY, AND YELLOWSTONE COUNTY, THE DEPARTMENT SHALL SUBTRACT FROM THE FISCAL YEAR 2006 ENTITLEMENT SHARE PAYMENTS THE AMOUNT DETERMINED FOR EACH COUNTY UNDER [SECTION 72(4)].

10. Page 88, line 28.

Following: "SUBSECTION (1)
Strike: "FOR"

11. Page 88, line 29.
Following: "Cascade County,"
Insert: "Flathead County,".

12. Page 88, line 29.
Following: "Yellowstone County,"
Strike: "an audit, by or at"

13. Page 88, line 29.
Following: "at"
Insert: "shall contract for a limited scope audit under"

14. Page 88, line 30
Following: "AUDITOR"
Insert: "."
STRIKE: ",MUST BE CONDUCTED"

15. Page 89, beginning on line 13.
Strike: " (3) EACH COUNTY AUDITED UNDER SUBSECTION (2) SHALL REIMBURSE THE LEGISLATIVE AUDITOR FOR THE COST OF THE AUDIT FOR THAT COUNTY."
Renumber: subsequent sections

16. Page 89, beginning on line 27.
Following: "THE"
Strike: " LAW AND JUSTICE COMMITTEE SHALL PREPARE LEGISLATION TO BE INTRODUCED IN THE 2007 LEGISLATIVE SESSION THAT WILL AMEND 15-1-121 TO PROVIDE THAT THE BASE"

17. Page 89, beginning on line 28 and continuing on line 29.
Following: "Cascade County"
Insert: "Flathead County,"

-END-

EXHIBIT 7
DATE 3/30/05
SB 146

Amendments to Bill No. 146 (Option #1)
3rd Reading Copy

For the House Judiciary Committee
Prepared by the Montana Association of Counties
March 30, 2005

1. Page 86, line 27.

Strike: "Subsection 7, in its entirety.

Insert:

(7) Accumulated sick and vacation leave and years of service with a county or city must be transferred fully to the state as of July 1, 2006, and become an obligation of the state at that time. On January 1, 2007, and on January 1, 2008, the counties and cities with public defender employees who are transferred to state employment by this section shall pay the state 12.5% of the sick leave accrual and 25% of vacation leave accrual for each employee who transferred to state employment on July 1, 2006, at the rate of pay as of June 30, 2006. The transferred employees shall retain their accumulated sick and vacation leave. Any liability for accumulated compensatory time of employees who are transferred from county or city employment to state employment under this section is not transferred to the state and remains an obligation of the county that employed the employee prior to the transfer, subject to federal law and the county's personnel policies.

EXHIBIT 8
DATE 3/31/05
SB 146

ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

Black Letter

The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Defense counsel's workload is controlled to permit the rendering of quality representation.

Defense counsel's ability, training, and experience match the complexity of the case.

The same attorney continuously represents the client until completion of the case.

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Defense counsel is provided with and required to attend continuing legal education.

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

NATIONAL LEGAL AID & DEFENDER ASSOCIATION

Expert Report

An Assessment of Indigent Defense Services In Montana

SUBMITTED IN THE CASE

White v. Martz
CDV-2002-133

August 4, 2004

BY

The National Legal Aid & Defender Association
1140 Connecticut Avenue, NW, Suite 900
Washington, DC 20036

Executive Summary

After conducting intensive site visits and interviews and reviewing the deposition and document discovery from the litigation in *White v. Martz*, the National Legal Aid & Defender Association (NLADA) has concluded that the provision of indigent defense services in Montana is unconstitutional in at least the following respects:

- Montana has failed to adequately fund the provision of indigent defense services. It has not assumed responsibility for the funding of indigent defense services in the misdemeanor courts and is not meeting its responsibility to fund such services in the district courts. The State's own budget projections indicate a total shortfall of between $4.2 and $4.6 million for the 2004-2005 fiscal period. This shortfall is from a budgeted number that does not come close to covering the costs of a constitutionally adequate indigent defense system. *See infra*, Section II.A.1; ABA *Ten Principles*, Number 2.

- Montana's failure to adequately fund indigent defense services has resulted in woefully inadequate resources for indigent defense, particularly as compared to those available to the prosecution. Public defenders in many counties must pay for their own office overhead, computers, software, telephones, photocopying, secretarial and paralegal assistance — items they cannot afford they go without. The State's public defender offices are also under-resourced. Nine attorneys in the Missoula County Public Defender Office, for example, must all share one investigator, one paralegal and three secretaries. The County Attorney's Office, in contrast, has the resources of the police and sheriff's department, three paralegals and seven secretaries. *See infra*, Section II.A.2; ABA *Ten Principles*, Number 8.

- Indigent defense services in Montana are not sufficiently independent and free from undue political interference. The judiciary largely controls indigent defense in many counties by appointing counsel, approving attorney compensation and reviewing the use of experts and investigators. Judges are free to (and often do) appoint counsel as they see fit rather than pursuant to objective guidelines, deny public defenders additional compensation for complex cases, and subject the use of experts and investigators to limits not applicable to prosecutors. Although it is relatively free from such judicial control, the Missoula Public Defender Office is also insufficiently independent — the County Attorney in that County, for example, often reviews the Office's budget. *See infra*, Section II.B; ABA *Ten Principles*, Number 1.

- Montana has failed to ensure that only qualified counsel represent indigent defendants and that public defenders receive the training necessary to perform competently. Many attorneys are assigned to cases pursuant to strict rotational systems with no regard for their level of experience. Attorneys are often forced to learn on the job, or not at all, as the State does not provide any orientation program for newly hired public defenders, any systematic and comprehensive training, or any technical assistance. County attorneys, in contrast, have access to

an office created by the State specifically to provide them with training and technical assistance. *See infra*, Section II.C; ABA *Ten Principles*, Numbers 6 and 9.

- There is no uniform system for determining eligibility for indigent defense and appointing public defenders in a timely manner in Montana. Screening for indigency varies from county to county but is done on an ad hoc basis in all counties, resulting in abuses of the system. Delays in appointment and initiation of client contact are also rampant. Defenders in Missoula County often do not see their clients for the first time until several weeks after appointment. *See infra*, Section II.D; ABA *Ten Principles*, Number 3.

- Public defenders in Montana do not have adequate time to meet with their clients and often fail to ensure that the meetings that do occur are confidential. There are no uniform policies or procedures for establishing and maintaining a working client relationship and many public defenders do not have regular and periodic substantive meetings with their clients. Letters from clients indicating that weeks, if not months, had passed since they had last heard from their attorneys are not uncommon, particularly in Missoula County. *See infra*, Section II.E; ABA *Ten Principles*, Number 4.

- There are no policies or procedures in Montana limiting the number or type of indigent defense cases to which public defenders may be assigned or any policies or procedures for collecting caseload data. Although the NLADA was unable to secure reliable caseload data, deposition testimony by public defenders indicates that are uniformly overworked. *See infra*, Section II.F; ABA *Ten Principles*, Number 5.

- Public defenders in Montana are not supervised in any meaningful way or monitored for compliance with any performance standards. There are no standards governing a defender's obligations to his or her client, conflicts of interest, the use of investigators and experts, the right to a speedy trial, plea bargaining, or the requesting of continuances. Although judges are involved in the appointment of indigent defense counsel and review attorney compensation, they do not provide any direct supervision because doing so would violate the Canons of Judicial Ethics. *See infra*, Section II.G; ABA *Ten Principles*, Number 10.

These failings have resulted in significant harm to indigent defense clients in Montana, who pay the price in the form of attorneys who take cases despite clear conflicts of interest, inappropriate waivers of probable cause hearings, lack of meaningful contact with their attorneys, failures to investigate or to use experts, infrequent motion practice and trials, pressure to take guilty pleas and to sign speedy trial waivers, and infrequent appeals. *See infra*, Section II.H.

Constitutional rights extend to all Americans, not merely those of sufficient means. Although state and local governments must balance other important demands on their resources, the Constitution does not allow for justice to be rationed to the poor due to insufficient funds. Montana has failed to deliver the constitutional right to effective assistance of counsel promised over forty years ago by the United States Supreme Court.

EXHIBIT 9
DATE 3/31/05
SB 196

Amendments to Senate Bill 146
2nd Reading Copy as approved by Senate Finance and Claims

Requested by the American Civil Liberties Union

Prepared by Jacqueline T. Lenmark
March 31, 2005

1. Page 1, lines 11 and 12.
Strike: "ESTABLISHING" on line 11 through "DEFENDER;" on line 12

2. Page 8, line 19.
Following: "defender."
Strike: "THE OFFICE MUST BE LOCATED IN BUTTE, MONTANA."

-- End --

EXHIBIT 10
DATE 3/31/05
SB 196

Ken Young Forced to Serve Time, Months After Being Ordered Released

By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

From the moment Ken Young was arrested and throughout his incarceration, all he thought about was his little girl.

"I was missing work and unable to support my little girl," Young said. "I was worried about her."

On September 20, 2002, Young was sent to prison for Driving Under the Influence (DUI) and a probation violation on a previous DUI. Over a year later he signed a plea agreement that covered all of his charges. He was to serve 13 months plus four years probation, under supervision of the Department of Corrections, with credit for time served.

Usually when someone is meant to go to jail, the arrest documentation reads "commitment to the Department of Corrections," not "supervision." When Young read the wording he asked his public defender, Margaret Borg, to clarify the sentencing.

"I did not hear a peep from her," Young said. "I wasn't fighting the sentence, I just wanted clarification on it. I wanted to know what [Missoula District] Judge Ed McLean meant by 'supervision.'"

Young wrote between 30 and 40 letters to Ms. Borg, as well as sending internal notes, known as "kites." But he felt as if his letters were going nowhere. Not only that but he was still worried about his daughter.

"She was only seven back then," Young said. "My ex-wife never sent me any of her letters and I was there a year before she even brought her in to see me."

Finally, on October 28, 2003, Young got the clarification he'd been waiting for. Judge McLean filed an amended judgment, with a handwritten note saying that all remaining time on Young's sentence would be suspended. Young should have been released immediately.

"But I had twelve days left on my 13-month sentence and they wouldn't let me go," Young said. "The next thing I knew I was taken from the Missoula County Detention Center to Great Falls Regional Prison. I couldn't call the Public Defender's Office because they don't accept collect calls so I called the ACLU in New York and told them what was going on."

"I sent Margaret [Borg] letters every day from jail, plus through the regular mail, even when I was in Great Falls," Young said. "I never got any response. I was disgusted. I was way passed anger. Everybody knew I was supposed to be out and there I was sitting in there. These people just throw you away and they don't care. Public defenders don't care. I felt helpless and disgusted. That's the way the system is, they're not going to help you, they just want to make a deal and be away with you."

After three weeks in Great Falls, Young was transferred to Montana State Prison, in Deer Lodge.

"There are people in Great Falls waiting for six months to go to prison and I was only there for three weeks when they shipped me off," Young said. "They were trying to shuffle me around, and put me where it's harder to get out."

In March 2004, four and a half months after the court officially released him, Young was finally freed from prison. He's currently thinking about a lawsuit, but the most important thing for him is that he's back with his daughter.

"I've been working in construction and I've gotten my little girl back," Young said. "I'm not drinking anymore. I've got to take care of my kid."

Bill Hooks, a Helena attorney and a former public defender said that, due to high caseloads, most public defenders have a hard time giving every client the time his or her case needs.

"It requires motivated people to go to work each day to do the best for those clients," Hooks said. "Many times there's an unwillingness to do that."

Hooks said, the way the system works now, there are many times a defendant can sit in jail for lengthy periods without hearing from his or her attorney.

"The result is a lack of confidence in the system," Hooks said. "People end up in prison who don't belong there, or they linger in jail for lengths of time inappropriate for their cases, if the cases had been properly explored or reviewed." But he added since the Constitution calls for effective counsel, "we should do everything we can to live up to that mandate."

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She worked for 10 years as a reporter and columnist for the ***High Country Independent Press***. She can be contacted at: 406-388-4062 or mcorriel@imt.net .)

Incompetent Counsel Leads to 40-Year Sentences for Innocent Man

Editor's Note: The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.

By Michele Corriel

Because of an incompetent attorney, Jimmy Ray Bromgard was sentenced to 40 years in the Montana State Prison for a crime he didn't commit.

Bromgard, only 17, was under detention in Billings for fighting in school when he was placed in a police lineup 18 years ago. The next the thing he knew a judge was handing him a 40-year sentence for raping an eight-year-old girl. He spent over 15 years in state prison, trying to reclaim his freedom.

Thanks to the New York-based Innocence Project, a non-profit organization fighting to reverse wrongful convictions, Bromgard has been acquitted. But the problems that put him behind bars still exist.

At the trial, the prosecution offered a piece of hair as evidence, determined by the Montana State Crime Laboratory (now called Montana State Forensic Sciences Division) to be Bromgard's. According to court testimony, Arnold Melnikoff, then-director of the Montana State Crime Lab, told the jury that the hair found on the victim's sheets had a one-in-10,000 chance of not coming from Bromgard. He added that, combined with the pubic hair found in the sheets, there was a one-in-100,000 chance they had both *not* come from Bromgard.

"More or less, he told the jury I had to be the guy that did it," Bromgard said.

Experts who examined the court case say there are no probable or accurate statistics when it comes to matching hair samples, a practice commonly referred to as "junk science."

The other strike against Bromgard was his attorney, nicknamed "Jailhouse John" Adams, according to the Innocence Project report, because his clients ended up in jail.

"He showed up [to the trial] with an empty notepad," Bromgard said. "He made no opening statements. The only witnesses he called on my behalf were my stepfather and my mother, because they were already in the courtroom."

Bromgard's court-appointed attorney took little time with his case, mounted practically no defense, and was not prepared to deal with the magnitude of the crime. The jury deliberated for only one hour and came back with a guilty verdict.

The court sentenced Bromgard to three consecutive 40-year prison terms at the state prison.

"They put me in general population (at the prison)," Bromgard said. "That's where I got my jaw broken for being a child molester."

After that, Bromgard spent 23 hours a day in solitary confinement.

It wasn't just that Bromgard was innocent; his civil rights were violated, according to those who have investigated his case. The right to a "guiding hand of counsel," was granted in 1963 with the U.S. Supreme Court decision, *Gideon v.*

Wainwright. That translates into a right to have an attorney who works in the client's best interests at all times.

"Our mission is to provide the effective assistance of counsel as dictated by *Gideon v. Wainwright*, and all of the subsequent court decisions," Penny Strong, current Chief Public Defender for Yellowstone County, said recently. Strong was not yet a public defender at the time of the Bromgard case (1987).

During Bromgard's trial, the eight-year-old victim was unable to identify him. At the time of the line up, although the girl picked Bromgard out, she was not sure he was the right man. After the girl was shown the video of the line up, she said she was only "60-to-65 percent sure." When asked at the trial she stated, "I am not too sure." But she still identified him in court as her assailant.

Bromgard's counsel never objected.

Aside from the hair samples, the only other evidence used at trial was a checkbook from the victim's home found near Bromgard's home, not far from the crime scene. However, Bromgard's fingerprints were not at the crime scene or on the checkbook.

DNA testing, performed at the request of the Innocence Project, found semen from the victim's underwear did not match Bromgard's DNA.

"His attorney did no investigation, hired no expert to debunk the state's forensic expert, filed no motions to suppress the identification from a young girl who was, according to her testimony, at best only 65 percent certain, gave no opening statement, did not prepare a closing statement, and failed to file an appeal after Bromgard's conviction," states the Innocence Project report on Bromgard's case.

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She can be contacted at: 406-388-4062 or mcorriel@imt.net.)

(For further information on the Innocence Project, check their website at www.innocenceproject.org. They have exonerated 154 people to date.)

(For detailed information on *Gideon v. Wainwright* see the National Legal Aid & Defender Association's website at: http://www.nlada.org/Defender/Defender/Defender_Gideon/Defender_Gideon_40.)

Former County Employee Questions 25-Year-Sentence for Non-Violent Offense

By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

David Lee Brown isn't saying he didn't do the crime. But, he is saying he shouldn't be doing so much time. For a non-violent offense regarding only property and not another person, a sentence of 25 years is too much.

"To get 25 years for theft is kind of ridiculous," Brown said. "I know a guy who shot a kid in the arm, that's pretty violent, he only got eight years and most of them were suspended."

Brown says that his public defender never took the time to go over his case, never put forward the defense Brown asked for, and never brought forward the witnesses Brown had that would have put Brown in a better light.

"Somebody who is charged with a crime, but just wants to get it behind them will plea bargain just to get out of jail," Ron Waterman, consulting attorney for the ACLU, said. "Here's somebody who felt desperate enough, he simply admitted to the crime. Typically, a plea bargain gives the defendant a sentence below the maximum. In this case, 25 years is pretty heavy."

Living in Polson, Brown was employed at the Lake County Courthouse as a maintenance worker. He'd been accused of taking $5,000 from a safe in the courthouse, but there wasn't enough evidence to press charges.

When an accusation of stealing school computers arose, Brown wanted to change the venue of his trial because he felt he wouldn't get a fair shake. "I knew the judge, I knew the prosecutor, and the court reporters, on a first name basis," Brown said. "So I thought it would be best if I got a change of venue. But, the public defender didn't even try. I thought he should have at least put a motion in, but he never did."

Brown met with his public defender, Ben Anciaux, a few times before the 2002 trial, and he was assured that his alibi witnesses would testify on his behalf. But his public defender did not contact them until the day before the trial.

"In fact, the witnesses had to track my public defender down at the courthouse," Brown said. "I wanted to assert my alibi defense, but he wouldn't let me. He didn't suppress evidence or anything."

While Anciaux was representing Brown, he was also running for county attorney, a race he lost.

While Brown was out on bond, he got arrested on another burglary charge. According to Waterman, in the eyes of others, Brown already had one strike against him.

"It's a slippery slope," Waterman said. "If you don't have adequate counsel that sense of hopelessness sets in and you may make some bad decisions."

Brown was given a different public defender, Larry Nistler.

"But Anciaux had the case so messed up, the prosecutor was unwilling to talk to us," Brown said. "They wanted me to plead guilty to that crime and the first crime at the courthouse."

Brown still wanted to take his case to trial, saying he wanted his day in court. But, Nistler advised him to plead guilty.

"I wanted to go to trial," Brown said. "But the day before the trial, Nistler said the alibis wouldn't work. He told me we should just plead guilty right now and see what we get. I didn't even have a plea bargain in place. I didn't really know what I should do. I was relying on his expertise."

Nistler told him that, if he were to take his case to trial, he'd get the maximum sentence of 30 years. But, if he pled guilty, he'd probably only get ten years.

"I felt like he and the prosecutor were teaming up on me," Brown said. "I felt like pleading guilty was my only option."

Instead of ten years, Brown was sentenced to 25 years imprisonment and is currently serving time at the Crossroads Correctional Center in Shelby.

Brown said he was just another case number, and not treated as a person with a life, feelings and rights. "It could have at least been argued," he said. "But now I can't appeal my case, because I pled guilty. I feel like I don't have any recourse."

To date, Brown has served two of his 25 years and is left with a bad taste in his mouth about the justice system. "The public defenders are there to help people, but they're just helping the county," Brown said. "They sure didn't help me."

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She can be contacted at: 406-388-4062 or mcorriel@imt.net.)

"If You Don't Have Money, Plan on Sitting in Jail"

By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

Candace Bergman knows she made some bad choices. All she's ever wanted was a chance to make amends, turn her life around, and take responsibility for her actions. But she says her public defender made that impossible. Instead of helping, he hindered her. Instead of reaching out, he turned his back.

"I sat in the Missoula County jail for 10 months on a possession charge," Bergman said. When she finally got to trial she was only charged with six months. She had already served four more months than her sentence.

Bergman had her own clothing business in Missoula for seven years. She was an upstanding citizen and had raised two children. Then she made a mistake. After her divorce, she took up with a man who introduced her methamphetamines. Everything she'd worked for, everything she stood for, crumpled before her eyes.

"I was more interested in doing drugs than doing my business," Bergman said. When her slide downhill began she neglected her bills and wrote bad checks. "Keep in mind the only time I had legal problems was after I met my ex-boyfriend. I didn't get any jail time for the bad checks, just a six-year deferred sentence. All I had to do was pay my restitution and live a clean live. But that's not what I did."

On September 12, 2001, Bergman was arrested on two counts of felony drug possession.

"That was when I went to jail and I stayed there," Bergman said. "I felt like I was slipping away. Like a piece of [garbage]. Like nobody cared about me. All the power you have within yourself is taken away. Day after day. I wasn't convicted. I was just sitting there."

Her public defender, Alan Johnson, was unresponsive to her requests for meetings. Johnson never showed her a proposed plea agreement and never discussed the facts of her case. He asked for several continuances that left Bergman remaining in jail. He did not allow her to correct errors in a report that could have got her into a treatment center for her drug addiction.

On February 7, 2002, Johnson left his job as a public defender. It would be five more weeks before Bergman was assigned a new attorney.

"When you're sitting in jail wishing things would happen -- it's so hard," Bergman said. "I'd have court dates and they'd be cancelled and I never knew about it. I felt beaten down and discarded. When a person is sitting in jail with charges pending against them, facing prison time... I know there's due process, in the back of my mind. But when you're stuck in jail, nobody comes to see you, then you feel like even your public defender has forgotten you."

While Bergman was incarcerated, her trailer home was auctioned off for back rent on the lot. She did not have a say in the matter. "It was treated like an abandoned vehicle," Bergman said.

Ron Waterman, an attorney consulting with the American Civil Liberties Union, said that whenever someone is accused of a crime, it has a consequence in society. "There is a whole cluster of things that happen – prison or bail – they are out of pocket for the cash bond, or property is adversely impacted."

Waterman added that people awaiting trial are dealt with in ways different than the rest of us.

"And that's compounded by the criminal process itself," he said. "Your life is put on hold. That's why the Sixth Amendment for a speedy trial is in the Constitution."

Bergman couldn't tell her kids what was going on either, because she had no idea as to her fate.

"They were displaced," Bergman said. "That I blame on myself. But I don't believe a person should sit in jail without resolution. Convict me or let me go. It really screws with your mind."

Especially when she witnessed other people, people with resources and the ability to hire private attorneys, come and go.

"The people who were using paid lawyers got out of jail," she said. "Their cases were taken care of because they could pay for a lawyer. If you don't have money plan on sitting there."

Bergman said her public defender, Alan Johnson, treated her like trash.

When she was finally assigned a new public defender and her case was resolved, Bergman was moved to a halfway house. She now works two jobs and hopes to be out on her own this spring.

Bergman learned to train her own service dog while she was in jail.

"Once I'm released from the center, I'll start working with my service dog, going out to nursing homes, rehab centers, hospitals – to do pet therapy," Bergman said. "I'm 38 years old and meth has taken a lot of my life. I have something to hold onto and hope for the future. I don't want to waste anymore of my life incarcerated. I've got a lot of living to do."

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Man Held Without Trial for Nearly Two Years

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

By Michele Corriel

Jack Kottre lost nearly two years of his life inside a Missoula county jail. His 23-month spiral down into the depths of despair was the result of a broken justice system.

"I don't even know how to describe it," Kottre said. "I didn't have anybody to help me."

Arrested on May 4, 2002, for a felony DUI, Kottre was assigned a public defender. Unfortunately, for Kottre, his public defender didn't want anything to do with him or his case.

"The public defender was pretty much saying that he had somebody breathing down his neck," Kottre said. "He just kept telling me to plead guilty. And I wasn't guilty."

Kottre had been pulled over because of a supposed parole violation, when in fact, his parole period had expired. "I'd had a few beers," he admitted, "but I wasn't intoxicated and I wasn't going to plead guilty. I wanted my day in court."

But that day wasn't to come for a long time.

Thirteen months after Kottre's arrest with Kottre still in jail, his attorney took himself off the case. That's when the chief public defender took it over.

According to Montana state statute, the maximum amount of time a judge can sentence a person for a felony DUI is 13 months in jail. Kottre had already served that before he even got to see a judge.

It took another six months before the chief public defender came to talk to Kottre about his case.

"When she finally did come to see me she said, 'Jack, why don't you just plead guilty?' And I said, 'Why don't you get the hell out of here.' I was so depressed," Kottre said. "Nobody was hearing me. I tried to fire my attorneys all the time I was in there. It was a joke. I felt helpless. This is the United States, not some foreign country."

The Sixth Amendment of the U.S. Constitution guarantees citizens rights to a speedy and public trial, an impartial jury, and to have the assistance of counsel for his defense. The Fourteen Amendment guarantees due process. Both of these amendments were disregarded in Kottre's case.

Ron Waterman, cooperating attorney with the American Civil Liberties Union, explained that most speedy trial violations, as it pertains to the Sixth Amendment, happen to those people who cannot afford to hire their own attorneys.

"A speedy trial problem means you don't have competent counsel," Waterman said. "Competent counsels will deal with their clients in a professional and expedient manner. In this case, Jack Kottre was assigned an attorney."

Waterman said the problem with the lack of a speedy trial is that it allows the prosecution to incarcerate people without a conviction.

"What we're doing is presenting to America something that we usually think of as a Third World problem," Waterman said. "We are giving the prosecution the power to imprison a person without necessarily having any evidence to support the accusations. This fellow is taken off the streets, away from his family, accused of a crime but the accusation was never tested. They never proved anything and he lost two years. That could be you or me."

This type of constitutional violation most affects only a certain portion the population – people with limited funds, Waterman said.

"It's every poor person's concern -- arrested with a crime, incarcerated and rotting in jail until the authorities let you go," Waterman said. "As a society it has to be our concern. Certain people are being exposed to the potential that their freedom will be taken from them without proof of guilt. It weakens the fabric our society. This issue deals with the idea that there are two systems of justice -- one if you have the money and another if you don't."

Although Missoula is one of the few counties that have a public defender's office, its caseloads are so huge that the office was ineffectual in protecting Kottre's rights.

In frustration, Kottre tried representing himself, but the judge would not allow it. Finally, Kottre decided to just plead "nolo contendre," which means, "I do not contest," a plea that implies a guilty plea, but is not technically an admission of guilt.

"I told the court that I wanted to leave my case open, on the grounds that I wanted to appeal my speedy trial rights, and on unlawful incarceration," Kottre said.

On April 24, 2004, all the charges against Kottre were dismissed.

Kottre's unlawful incarceration case is pending.

"I'm still stressed out over it," he said of his 23-month-long unconstitutional detention. "I'm not suicidal or anything, but it'll bother me for a while."

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(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She can be contacted at: 406-388-4062 or mcorriel@imt.net .)

'Lost File' Leads to Nearly a Year's Imprisonment

By Michele Corriel

Editor's Notes: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

The person in this story has asked that his real name not be used. Travis Hill is a fictional name, but all particulars of his case are true.

Travis Hill hit bottom. His life was a mess. He was already on probation when he got arrested again. Things were going from bad to worse.

When he got arrested in Missoula for theft, it also violated his probation terms in Polson, which sent him to the Lake County Jail. And Hill found himself in Catch-22. Because he was in jail in Lake County, he was not able to appear in Missoula County court to plead guilty to the new charges against him.

"I had a court date in Missoula to deal with the charges eight days after I was in jail," Hill said. "So I couldn't get the Missoula stuff taken care of because they wouldn't transport me to the Missoula County courthouse, while I was in jail in Polson."

Officials did, however, transport Hill to the Montana State Prison from Lake County, on the probation violation charge. And his charges in Missoula were still unanswered.

Hill wanted to plead guilty to the Missoula charges against him: Theft, no insurance, DUI and drug possession. He knew what he did and wanted a fresh start, to serve his time, and get into a rehab program. But that couldn't happen until he appeared in Missoula County court, where his pleas could be officially entered into the record. Until then he was stuck in limbo.

"I was guilty, I was caught red-handed," Hill said. "There was no question. I admitted it. I just wanted the court to say, 'Guilty,' slam the gavel down and sentence me. The simplest thing imaginable."

But Hill couldn't get his lawyer to answer a request for transportation to a Missoula court appearance. His original public defender, Nik Geranios, quit his job after filing initial paperwork. His replacement was Colleen Ambrose, who never contacted Hill. He didn't even know he had a new lawyer. Ambrose later said she lost Hill's file and that's why she never responded to him.

"That was not an excuse," Helena-based attorney Palmer Hoovestal stated, during his review of the case for ACLU of Montana. "The attorneys should at least have dictated a brief response. It is rarely, if ever, acceptable for a client to be unable to communicate with his lawyer for five months."

During early 2002, Hill wrote 13 letters to Ambrose and her supervisor.

"I started a weekly letter writing campaign," Hill said. "I verbally laid myself prostrate in front of her desk. I remember writing, 'Even a postcard from your janitor would make me happy beyond belief.'"

Hill just wanted to be eligible for some of the state programs offered at Deer Lodge, an impossibility because of an odd quirk in the law – due to pending charges that had not been answered, Hill could not apply for any of the programs offered by the state prison. Until he pled guilty to the charges he was persona non grata.

"It was excruciatingly frustrating," Hill said. "I couldn't do anything. It was supposed to be my attorney who was helping me, whom I had never met, spoken to, or corresponded with. She was supposed to be the person fighting for my freedom."

The e-mails from Ambrose show that she never met with Hill, nor had she even spoken to him. She was not aware that he was currently serving a sentence in Montana State Prison for his probation violation.

"This is absolutely unacceptable," Hoovestal stated. "Whether she could have done anything for him or not is beside the point. At a minimum, he should have been able to meet with his attorney before being sentenced."

After sitting for five months in prison, waiting to hear from his attorney, Hill finally wrote a letter to the American Civil Liberties Union of Montana, sending a copy to Ambrose.

"Within two weeks I had a response from Ambrose," Hill said.

Ironically, he spent no more than five minutes in front of the judge in Missoula and three months later, Hill was out on conditional release.

Hoovestal stated that Ambrose could have drafted a transportation order to get Hill to Missoula at any time from August of 2001 to June of 2002, but it was never even attempted. "[Hill] received deficient representation and that caused him harm."

"I'm back in college at the University of Montana, now doing well," Hill said, who is also working two jobs. "It made me a little bitter, but I'm getting over that. I was lucky. When you're sitting in a jail cell, all you can think about is your freedom and everyone forgets you're there. You're only a name and a number, yet your heart and brain are in a jail cell -- waiting."

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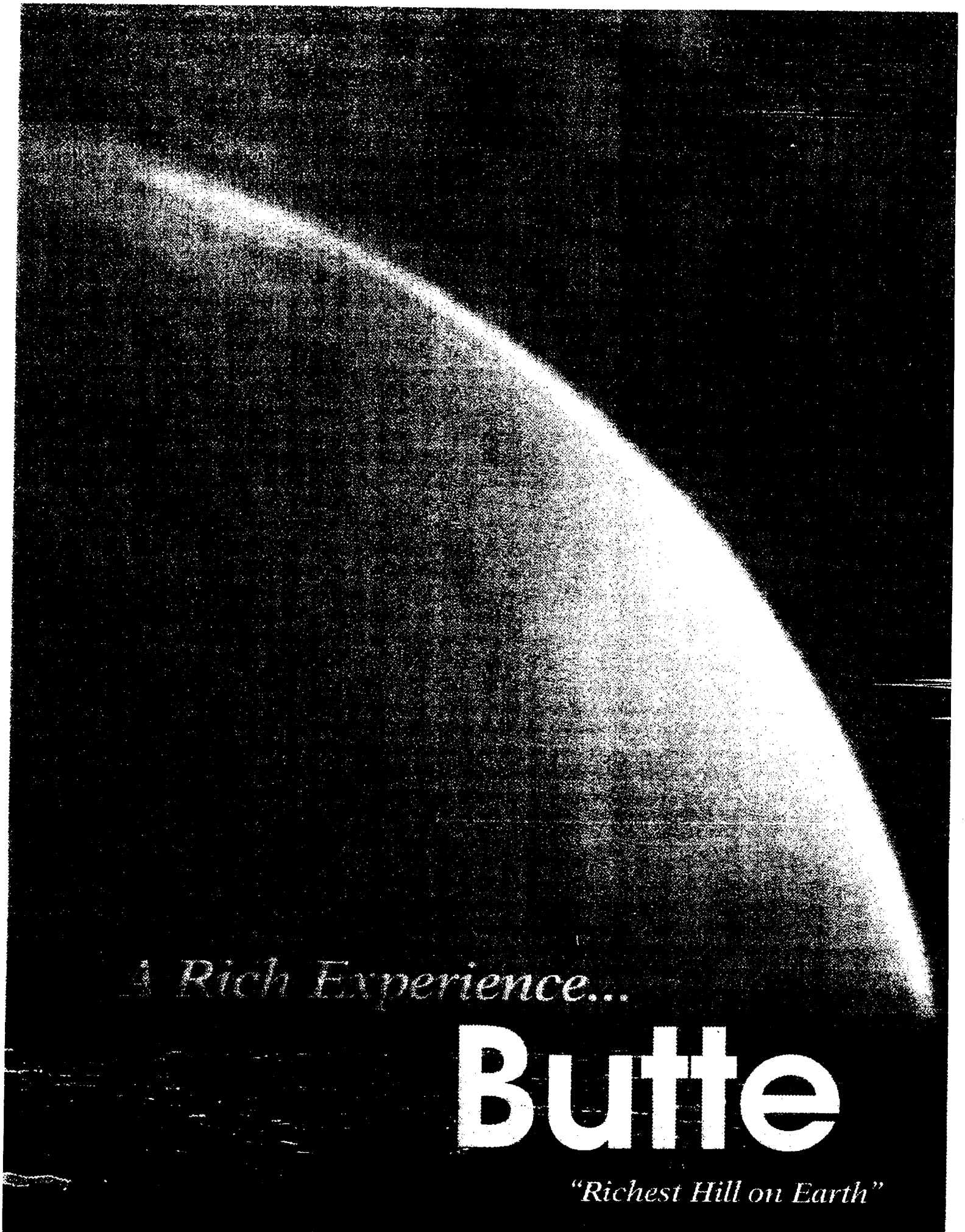
(Michele Corriel is a Belgrade-based freelance writer currently specializing in courts, law, and equal access to justice. She can be contacted at: 406-388-4062 or mcorriel@imt.net .)

Montana State Legislature

Exhibit Number: 11

The following exhibit is a booklet that exceeds the 5-page limit therefore it cannot be scanned. The booklets' cover has been scanned to help you when requesting information. The exhibit is on file at the Montana Historical Society and can be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton


A Rich Experience...
Butte
"Richest Hill on Earth"

BUTTE-SILVER BOW
OFFICE OF CHIEF EXECUTIVE
COURTHOUSE
BUTTE, MONTANA 59701

PHONE (406) 497-6221
FAX (406) 497-6224

EXHIBIT 12
DATE 3/30/05
SB 146

March 30, 2005

TO THE HOUSE JUDICARY COMMITTEE OF THE STATE OF MONTANA

Dear Judiciary Committee Members:

The Butte-Silver Bow Chief Executive and Council of Commissioners would like to express their full support of SB 146 with the amendment to locate the public defenders office in Butte, Montana.

We feel that Butte not only offers the quality of life, top educational advantages, and centralized location for your public defenders office, but we feel that our competitive advantage in the sophisticated and technologically advantageous area of fiber optics and video conferencing is second to none. Butte has several office locations in and around Butte that makes it attractive from a physical location to the Federal and County Courthouses to the Montana State Prison.

Overall costs for per square foot commercial lease space in Butte vs. Helena is on average 25-50% less. Typical amenities of commercial leases in Butte include custodial services, utilities, parking, furnishings, local phone, voicemail, and others.

Considering Butte for the public defenders office is a sound fiscal choice and a well-considered location. Future employees of the office will be rewarded with lower housing costs, higher educational quality, and a welcoming community.

Sincerely yours,

Paul Babb
Chief Executive

EXHIBIT 13
DATE 3/31/05
SB 146

National Center for Appropriate Technology
Office Space and Staffing Services

The National Center for Appropriate Technology (NCAT) is a private, non-profit organization that **helps people** by championing **small-scale, local,** and **sustainable solutions** to **reduce poverty, promote healthy communities,** and **protect natural resources.** NCAT is headquartered in Butte, with offices in Fayetteville, Arkansas, and Davis, California.

One of the ways we carry out our mission within our local community is to provide affordable **office space**, including **support and professional services**, to small companies, individuals, non-profit and civic groups, and others who don't have the need for an entire building or staff.

NCAT Headquarters

Our Butte headquarters is a 1902 brick building that is on the **National Register of Historic Places**. The building operated as the Silver Bow County Poor Farm Hospital, providing care for the elderly and indigent, until it was closed in the 1930s. The structure continued as a hospital until 1956. NCAT purchased the building and began our work in 1976.

While our building has enormous historic character, its offices are **modern and comfortable**, equipped with all the **conveniences** for success in today's business world. If you're looking for office space in Butte, consider what we have to offer!

- **Ideal location** just off both I-90 and I-15
- **Ample free parking**
- **Building security**
- **Conference rooms** with teleconferencing capabilities
- **High-speed Internet** access and **e-mail**
- **State-of-the art telephone system**

Space is available on a square-foot basis, with a variety of offices to choose from. And, you can customize your lease to include a host of support and professional services!

- **Reception services**
- **Website design, maintenance, and hosting**
- **Computer services/training**
- **Administrative management**
- **Financial administration**
- **Customized research**
- **Administrative support**
- **Toll-free hotlines**
- **Low-cost long distance service**
- **Fax**
- **Photocopying**
- **Shipping services**

Contact us for more information!

Marcia Brown
NCAT
3040 Continental Drive
Butte, MT 59701
(406) 494-4572 or (800) ASK-NCAT
info@ncat.org

EXHIBIT 14
DATE 3/31/05
SB 146

MAINSTREET UPTOWN BUTTE

March 30, 2005

Bill Penn, BSB Economic Development Officer
305 W. Mercury St.
Butte, MT 59701

Dear Mr. Penn,

Mainstreet Uptown Butte would like to express its support for the location of a Montana state public defenders office in Butte. Over the last few years, Uptown Butte has invested heavily in our high-tech infrastructure to attract businesses that need high speed Internet access and state-of-the-art videoconferencing capabilities. We have successfully attracted businesses that need to be able to communicate rapidly and continuously with clients and customers across the country.

At the same time, office rents in Butte, especially in Uptown Butte, compare very favorably with office rents in other parts of the state, including Helena.

Such a decision to locate this office in Butte would most certainly result in savings for the state at the same time that the jobs associated with the office would be heartily welcomed and appreciated by the community, especially if they are located in the historic Uptown district.

As the group that represents small businesses in Uptown Butte, Mainstreet Uptown Butte would welcome and strongly recommend a close look at our city as the location for the state public defenders office. Thousands of square feet of upgraded office space abound in historic buildings including prime locations within only a few blocks of the Butte-Silver Bow Courthouse and Mike Mansfield Federal Courthouse. To name a few:

Phoenix Building at 66 W. Park Street
Hennessey Building, 130 N. Main Street
Metals Bank Building, 8 W. Park Street
Finlen Hotel, 100 E. Broadway
Silver Bow Club, 125 W. Granite Street

If we can provide any assistance or information during this continuing process to clarify the wisdom of choosing Butte as an office location, please contact me. We would be eager for the opportunity to tout our town's attributes and amenities.

Sincerely,

George Everett
Executive Director

P.O. Box 696 Butte, Montana 59703 PHONE: 406-497-6464
www.mainstreetbutte.org Email: director@mainstreetbutte.org

EXHIBIT 15
DATE 3/31/05

What's Up?

You're in the Butte area for a night or more. Now what?

Well, if you are looking for a memorable day or nightime diversion, or even an adventure or two, look up. Look up to find a unique shopping and dining experience, live music in sociable watering holes, museums and other historical curiosities, antique shops, coffee shops, or a place to worship.

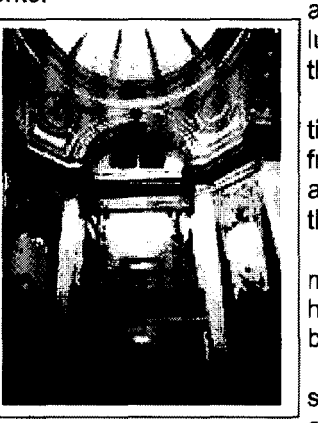
Uptown Butte is where you'll find old Butte, where you'll discover abundant remnants of a cosmopolitan city on the urban frontier.

Butte - An Urban Legend

Travelers to Butte are in good company.

Trains came to Butte in 1881, beginning its long run as a crossroads and transportation hub for the region. Since then, hundreds of thousands of travelers from all corners of the earth have arrived here. Butte reached its peak as an industrial metropolis between the years of 1880 and 1920 as the home of as many as 100,000 residents.

Some came for a brief stay, to seek their fortunes in the copper mines as miners or in the many trades that served them, and then moved on. Others came, maybe planning a brief stay, and three or four generations later their descendants still live in Butte. Whether you have come for a brief rest stop or an extended stay, there's plenty to see and do depending on how much time you have.



The interior of the Butte Silver Bow Courthouse at 155 W. Granite Street in Uptown Butte.

The fabulous wealth taken from what became known as "The Richest Hill on Earth" let a boomtown become a permanent settlement, a city built on a hill close to where its original residents worked.

Wealthy investors developed their mining properties but they also built a city with the latest amenities. Butte was one of the first cities west of Chicago to have tall buildings, later called "skyscrapers." Several of these tall buildings still stand today. In fact, some of the most outstanding public and private architecture can be found in even a brief stroll through Butte's National Historic Landmark District (one of the largest with 4,500 structures).

Many of these buildings were some of the first in the nation to enjoy natural gas and electricity service. An electric trolley system provided inexpensive transport, and one day a week kids rode free to Columbia Gardens, the amusement park on the edge of the city.

It's a long story, but if you have a little time we would love to tell it to you. Aside from its rich history that is worth a visit alone, Uptown Butte has many attractions that will reward your attention.

Like the ore uncovered in a century of mining here, these attractions may remain hidden from plain view from those driving by on the Interstate highways.

If you have a little time, however, to stop and take a closer look, you'll discover a city that is still rich in history, culture and recreational opportunities in the surrounding area that are equal nearby national parks (and less crowded).

So if you have an hour or two, or a little time to spend, don't hesitate. C'mon Up!

Berlitz for Butte. You can blend in well in Brooklyn by learning a couple of choice phrases such as ***"What are you crazy or sumpin'?"*** or ***"Get outta here!"*** If you listen carefully, you may detect Butte's own distinctive dialect as well. Want to speak Buttian? Try out these phrases before heading out into public in Butte. ***Howzshegoin'?*** is a common greeting in restaurants and on the street among friends and strangers (friends we don't know yet). ***Ya's Twirly*** (Your reservation is not for another 45 minutes, but we'll find a table for you anyway). ***Tap 'er light!*** (Take it easy, left over from the mines when, if you tapped a stick of dynamite too hard, you wouldn't be around too long) ***Youse goin' to the show?*** (Are you attending a performance at the theatre?) ***Take 'Air!*** (Have a safe journey, wherever you are heading.)

Places to Shop

You'll find nearly 100 businesses with a wide range of merchandise doing business in Uptown Butte, many in their third or fourth generation of operation. These businesses draw on the expertise developed and handed down for generations but they also stock the latest merchandise and offer exceptional customer service.

All Uptown businesses, young or old, are eager to impress you with the quality of their merchandise and their exceptional service. We encourage you to explore and discover what awaits you behind the narrowest storefronts during your visit. For details about any Uptown business, please call us at 497-6464 or visit our web site at www.mainstreetbutte.org.

Apparel

Wear something away from your visit to Butte. Fine shoes for men and women, mens' apparel, and clothes for infants and toddlers available in Uptown Butte.

Kally's Korner, 102 N. Main St., 782-7157
Fine sweaters and turquoise jewelry.

Miller Boots and Shoes, 301 S. Arizona St., 782-1306
Red Wing work boots for the big boys and shoes of all sizes and styles for kids of all ages.

Munchkins, 55 W. Park St., 782-2856
Specialty clothing and educational toys for infants and toddlers.

Richards and Rochelle Men's Wear, 17 N. Main St., 782-1761
Pendleton and Filson wool sweaters, blankets, throws, and carryalls. Fine shirts, too.

Sophie's Shoes for Women, 31 W. Park St., 782-1712
This renowned fashion shoe store carries women's shoes in all sizes from around the world.

Wein's Men's Store, 37 W. Park St., 782-1208
Hooded velour bathrobes, J. Garcia silk ties and Montana-made H.S. Trask men's shoes.

Art

Order unique Butte art or the finest regional and national art prints from quality galleries that offer framing and shipping services anywhere in the world.

Frame Galerie, 102 W. Granite St., 782-3209
Fine art prints, greeting cards and gifts, including a selection of Tiffany lamps. Stop next door for Javasu coffee, too!

Mountain Man Gallery, 31 N. Main St., 723-3263
Framed Western and Wildlife art, including Butte art and photography by local artists.

Main Stope Gallery, 45 W. Park St., 723-9195
Painting and sculpture by locally renowned artists.

Gifts

From jewelry to beads, to rare aromatic scents and unique Irish gifts, bring something home to remind yourself or a loved one of your visit to Butte, America.

Buffalo Gallery & Butte Jewelers, 53 W. Broadway St., 723-3321
Pearl strings, Montana sapphire jewelry, sterling silver and custom watches. Framed Wildlife art in the gallery upstairs.

Garden of Beadin', 43 W. Park St., 782-0661
Thousands of beads for every possible craft project, pendants, and imported clothing.

Colours & Scents, 21 N. Main St., 782-0926
Make-up, bath powders, body creams and aromatic scents.

Dancing Rainbow Natural Grocery, 9 S. Montana St., 723-8811
Large selection of vitamins, health supplements and healthy fresh and frozen foods.

Books & Books, 206 W. Park St., 782-9520
New bestsellers and classics, especially Butte and Montana history, children's books, magazines, greeting cards and calendars.

Cavanaugh's County Celtic and Beyond, 131 W. Park St., 723-1183
Nourishment for Irish roots—Celtic clothing, tableware, books, and music.

Smallest Restaurant in America. Uptown Butte was once the home of the smallest restaurant in America, The Success Café. Framed in a narrow alleyway between two buildings, the café seated four. In a large city where loyalties ran heavily in favor of Democrats, and citizens were encouraged to vote early and often in every election, the local joke was that this is where the Republican Party held their banquets. The Success Café was very popular among all parties and long lines would snake into the street waiting for one or two of the four seats to become available. Today, there are a few more seats available in renowned Uptown restaurants such as the Uptown Café, the Acoma, Creighton's, and Fred's Mesquite Grill, and the wait is not nearly as long.

More Places to Shop

Shea's Talking Tees & Gifts, 106 N. Main, 723-8998
Montana, Butte, and Irish T-shirts and sweatshirts. Large selection of Irish collectibles, including Irish Santas in stock year-round.

Wilhelm's Flower Shoppe, 135 W. Broadway St., 782-3695
Flower arrangements delivered anywhere in Butte or in the world.

The Garden, 55 E. Granite St., 782-6111
Look for a large selection of every design and style of Heritage Lace.

Whitehead's Cutlery, 73 E. Park St., 723-9188
Sharp deals on blades of all kinds. Large selection of Montana-made Ruana knives and Alaskan ULU and other fine kitchen blades.

Heavenly Occasions, 701 S. Dakota St., 723-7257
Broad selection of candles of all scents and sizes, including votive candles.

Off the Wall, 16 W. Park St., 782-3284
Unique gift ideas in the shadow of the historic Metals Bank building.

The Scrapbooker, 126 W. Park St., 782-7560
Lace, ribbon, stickers, stencils, appliques and every supply a scrapbook builder would want.

Insty-Prints, 120 W. Park St., 723-3363
Quality printing and copying in all sizes and colors.

Paper Moon/Abbey Carpet, 926 S. Arizona St., 723-6552
Fine floor and wall coverings of all kinds.

Park Street Gym, 75 E. Park Plaza, 723-3223
The best public place to pump iron on the Hill.

Piccadilly Museum of Transportation, 20 W. Broadway St., 723-3404
Get a complete set of license plates from every state in the USA and every Canadian province.

Dragon's Hollow & White's Castle Candy, 71 E. Park, 782-3540
Combining candy, coffee, computers and strategy gaming in Butte's first "cyber café."

Len Water's Music, 119 N. Main St., 723-3249
Big selection of guitars, organs, sheet music and hand-crafted African and powwow drums.

City Vacuum & Sewing Center, 25 S. Montana, 782-7409
Top-selling vacuum cleaners as well as sewing machines of every make and model.

Antiques

Butte is rapidly gaining a regional reputation as an antique shopper's dream. Several stores carry unique collectibles from fine old furniture to rare geegaws from bygone days.

D&G Antiques, 16 N. Montana St., 723-4552
Everything from Butte collectibles to fine porcelain and furniture.

Montana Restorations, 19 W. Broadway, 723-1519
European antique furniture as well as fine tables, chests & boxes crafted on the premises by a master woodworker.

Old Butte Candy & Antiques, 121 N. Main St., 723-4341
Sweeten the deal with candy as a gift or check out the eclectic selection of antiques.

Raven Lode Gifts and Antiques, 126 W. Broadway St., 723-3088
Antiques and hand-crafted jewelry, Western hatbands, hand-painted saw blade clocks, wood carvings and turquoise jewelry.

Someplace Else Antiques, 117 N. Main St., 782-2864
See what antique hunters from around the state find when they come to Butte for an antique shopping adventure. Plenty of unique gifts.

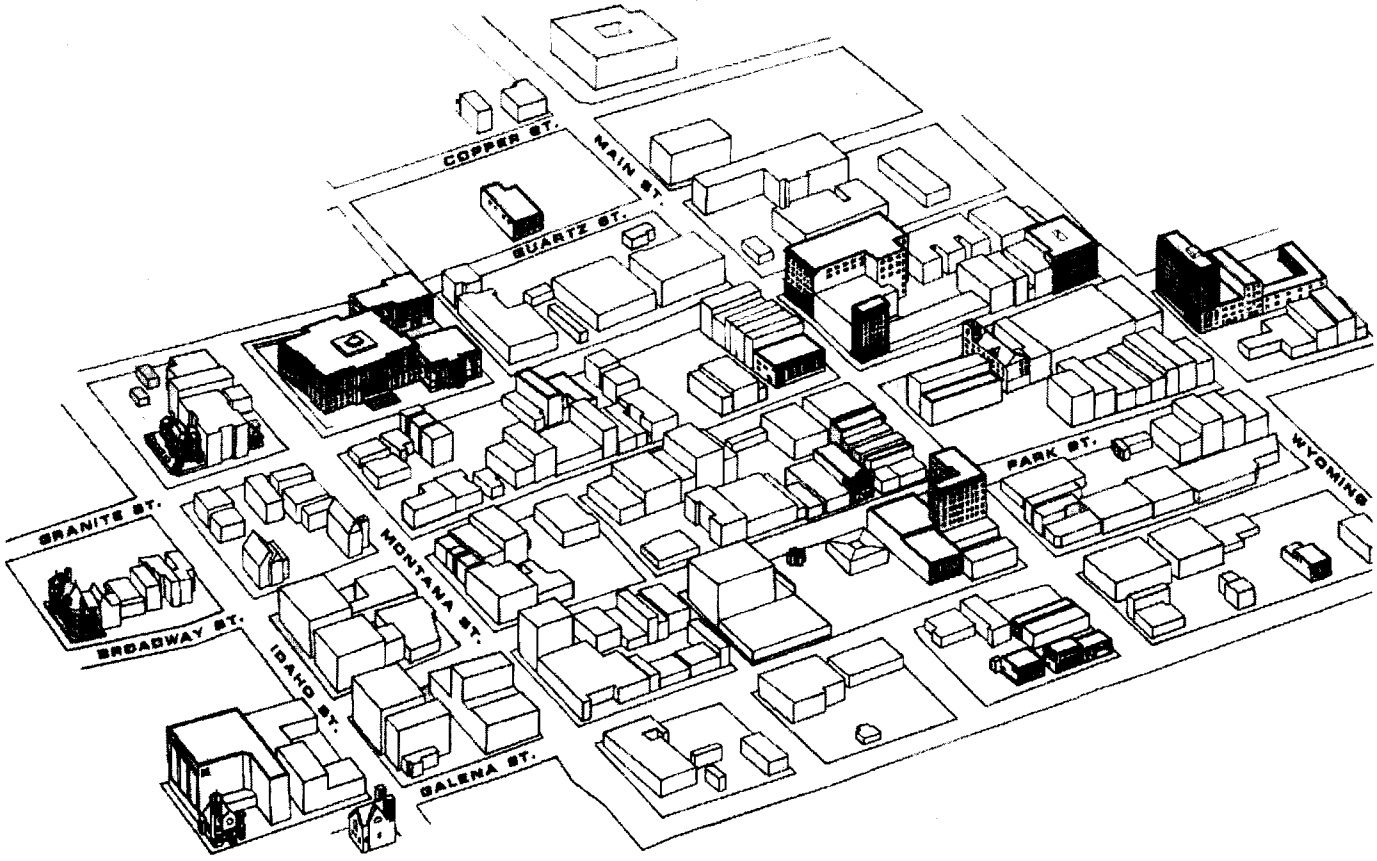
Historic Towey Hotel and Antique Mall, 11 S. Montana, 723-0061
A great variety of collectibles, surprising values and plenty of mementos to carry home.

Rediscoveries Vintage Clothing and Costume, 83 E. Park, 723-2176
Glamorous collection of period jewelry, hats and clothing, antique furniture and collectible dolls.

Second Edition Books, 112 S. Montana St., 723-5108
Rare books and magazines on all subjects, especially Butte and Montana history.

Mark Twain's Butte Visit. On August 1, 1895, Mark Twain visited Butte as part of his whirlwind world lecture tour. Twain later wrote in his diary, "Butte,Mont. Aug.1. Beautiful audience. Compact, intellectual and dressed in perfect taste. It surprised me to find this London-Parisian-New York audience out in the mines." One account has Twain retiring to the Silver Bow Club after the reception in his hotel to drink toddies and swap stories with Butte's most affluent. He might have written today of the audiences at the elegant Mother Lode Theatre on West Park Street where the audiences flock for performances of musical and dramatic events.

Places to See, Things to Do



The World Museum of Mining, West of Montana Tech 723-7211.

The World Museum of Mining is a 22-acre museum that sits on the west edge of Butte on land surrounding the Orphan Girl Mine, a silver mine once owned by Copper King Marcus Daly. The museum includes Hell Roarin' Gulch, an authentic reproduction of an 1890's mining camp with more than 35 buildings to visit. The museum also features a simulated underground exhibit that gives the look and feel of what it was like to work in the mines.

Mineral Museum, 1300 W. Park St., 496-4506

This museum, located on the Montana Tech campus, displays classic mineral specimens from Butte's mining district as well as from other mining areas from around the world.

Piccadilly Museum of Transportation, 20 W. Broadway, 723-3034

This museum displays collectibles from around the world including commercial advertising art, vintage Coca-Cola, Pepsi and oil company and subway memorabilia from the US and Europe, and license plates from around the world.

County Courthouse, 155 W. Granite St., 497-6200

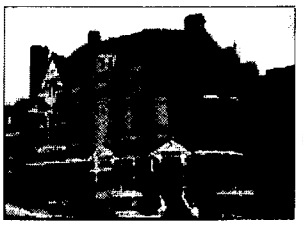
The Butte-Silver Bow County Courthouse was designed in the grand Beaux Arts style at a cost that rivaled the cost of the state capitol in Helena.

The building remains in use as office space for county staff. Visitors can take self-guided tours Monday through Friday, 8 am to 5 pm.

Butte Copper King. William Andrews Clark's Butte home was a Victorian mansion at 219 W. Granite Street. He was one of the richest men on Earth. He amassed a fortune from banking and mining ventures that was estimated in 1900 at $50 million dollars, making him one of the richest men of his day. After his death in 1925, his wealth was used to expand the Corcoran Gallery in Washington, DC and to establish the Los Angeles Philharmonic Orchestra. Tours of his Butte home and the nearby home of his son Charles (now the Arts Chateau) are open and available to the public.

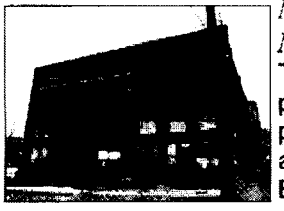
More to See and Do Uptown

Granite Mountain Memorial, East of Walkerville
Interpretive plaques and memorial engraved bricks commemorate the June 8th, 1917 fire here that took 168 lives, the nation's worst hard rock mining disaster. The memorial plaza allows a broad view of the Continental Divide, the Summit Valley, and the surrounding signs of a century of hard rock mining.



Copper King Mansion, 219 W. Granite St., 782-7580
The Copper King Mansion is a 34-room Victorian mansion built in 1884 as the Butte residence of Copper King William A. Clark, one of Montana's first multimillionaires who accumulated a fabulous fortune through mining and banking and made his way into the U.S. Senate. Tours are available.

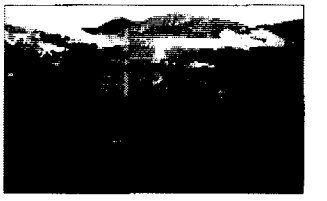
Arts Chateau 321 West Broadway, 723-7600
The Arts Chateau Museum is a 26-room mansion built in 1898 by Charles Walker Clark, eldest son of William Andrews Clark. The museum and arts center display a diverse collection of artwork, 18th and 19th century furniture, textiles, and collectibles.



Mai Wah Museum, 17 W. Mercury St., 782-4867
The Mai Wah Museum displays public exhibits to interpret the Asian history of Butte and the Rocky Mountain West. Butte's Chinatown was once one of the largest in the west with more than 1,200 residents in a six-block area that embraced two joss houses, a Baptist Mission and several restaurants and gambling houses.

In the summer of 2003, the Mai Wah Museum will host a rare traveling exhibit titled ***Gateway to Gold Mountain***.

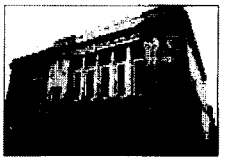
Dumas Brothel Museum, 45 E. Mercury St.
Designed and built as a brothel in 1890, the Dumas remained in operation until 1982, making it America's longest running brothel. It is a museum today where interested visitors can explore the checkered past of Butte's infamous red light district, Venus Alley. Public tours are available.



Berkeley Pit Viewing Stand Continental Drive
The Berkeley Pit Viewing Stand provides a stark view of the legacy of open-pit mining. The Pit operated from 1955 to 1982, removing 290 million tons of copper ore. It is more than 1,800 feet deep and getting deeper as millions of gallons of water flow into the Pit each day.

Old Number One Trolley Butte Chamber, Visitor and Transportation Center, 1000 George Street, 723-3177
Take a trolley tour of Butte's attractions. The old Number 1, a fire-engine red trolley ferries travelers around Butte's historic district while tour guides describe the past and present of one of America's largest national historic districts.

One and a half hour tours leave the Visitor Center four times a day—9:00 am, 11 am, 1:30 pm and 3:30 pm.



Mother Lode Theatre
316 W. Park St., 723-3602
Built in 1922, this is the last of several grand theatres that embellished the Uptown as elegant entertainment venues that hosted the greatest vaudeville acts of the era. Later, piano players accompanied silent movies. A few years ago, a group of patrons gathered to save this building and rejuvenate it as a regional center for the performing arts. The beautifully restored interior is open for public viewing whether a performance is scheduled or not. It is also the home of a renowned children's theatre, the Orphan Girl Theatre.

The Dumas Brothel Museum. Butte was recently designated by the National Trust for Historic Preservation as one of a America's Dozen Distinctive Destinations. Of its many distinctions, one of its most dubious is having the longest operating brothel in the United States. The Dumas "Hotel" was built in 1890 to serve as an upscale parlor house for discreet gentlemen and elegant ladies. It operated as a brothel until it was finally shut down in 1982. Today, it is a museum that is open for public visits and guided tours.

How Much Time You Got?

If You Have Four Hours

Even if you are in Butte for a few hours, there are things you can do that will result in a memorable visit.

Get some exercise and fresh air on the Blacktail Walking Trail behind the Visitor Center.

Take a 1 and 1/2 hour trolley tour of the Uptown and get a hint of what you could see if you stayed longer. Tours leave four times a day from the Chamber Visitor Center at 1000 George Street.

Drive up the hill and take a walking tour of the Historic District and see some of the fine architecture that remains more than a century after it was built.

Drive through the historic district and get a feel for what life was like on the urban frontier when the West was young or tour the west side and see the many Victorian "painted ladies" and mansions that still remain intact from a bygone era.

If You Have the Whole Day

Start with a 1 and 1/2 hour trolley tour that will introduce you to Butte's historic district. Then, come back up and take a closer look at the attractions of Uptown Butte when you have more time.

Take in the view again from the Berkeley Pit Viewing Stand and learn more about the history of mining at the World Museum of Mining on the west edge of the city. Explore the lives of the Copper Kings at the Copper King Mansion and the Arts Chateau.

Tour the elegant interior of the Beaux Arts Butte-Silver Bow County Courthouse.

Take a mineyard tour of Butte's remaining "gallows" frames that lowered miners to work below ground (no, those aren't oil derricks).

Learn more about the thriving Asian community of Butte at the Mai Wah Museum at 17 W. Mercury Street.

Explore other portals to Butte's fascinating past by visiting the Dumas Brothel Museum, the Piccadilly Museum of Transportation Memorabilia.

In between, explore the many small specialty shops in between on the streets of the Uptown district that harbor unique gift ideas and fine merchandise to take away from your visit to Butte.

If You Stay Overnight

You have time to relax, take in a movie or a show, enjoy fine dining in your hotel restaurant or in any of the several fine restaurants in the Uptown entertainment zone.

Or, visit one of the Uptown taverns for live music or good company.

Take a twilight drive up the Hill to enjoy the sunset or see the lights at night from the Hill that sparkle like diamonds on a black velvet cloth in the valley below.

Before you leave Butte, be sure to drive the Evel Knievel Loop and see the places that shaped the youth of the world's most famous motorcycle daredevil. Wherever you go as you leave our city, thank you for visiting us, and be sure to tell your friends what you have seen and done here.

As we say in Butte, *"Tap 'er light."*

Where to Find Tour Information

Butte Chamber of Commerce Visitor and Transportation Center, 1000 George St., 723-3177
Here travelers can pick up printed materials and ask questions about visiting the Butte area or relocating their home or business. The Chamber has historic displays, a display of George Grant's trout flies and here is where regular tours on the Old Number One trolley originate for a guided visit of Butte's Historic District.

Butte Archives, 17 W. Quartz St., 497-6226
The extensive holdings of the Butte Archives include genealogical references, newspapers, maps, books, government records, photographs and naturalization records. The Archives also sells various publications about Butte's history, including walking tours of sites, and Butte mineyards.

Main Street Butte Uptown Visitor Center, 120 N. Main St., 497-6464
Here travelers can get guidance and directions for adventures within the historic district. Pick up printed materials for attractions and local businesses, get oriented for a walking tour, get suggestions for shopping opportunities, or just rest a few minutes before continuing to explore one of the nations' largest historic districts.

Literary Inspiration. Dashiell Hammett, the undisputed godfather of the hard-boiled detective story, spent time in Butte working for the Pinkerton Detective Agency in 1920. He drew on his experiences to write his first, and what many consider to be his best novel, ***Red Harvest***. It is still considered to be the first novel of a new genre and one of the best detective novels ever written. Butte has served as inspiration for many authors and poets over the years including Myron Brining, Ivan Doig, Berton Braley, Mary MacLane, and Joseph Kinsey Howard, to name only a few.

Outdoor Recreation

Butte is surrounded by Montana in all directions. A drive of a few minutes in any direction will land you in the middle of what is some of the most beautiful wild country that remains in America. Here are only a few suggestions of things to do amidst all this natural beauty while in the Butte area.

Summer

Walking Trail
The Blacktail Walking Trail Center provides a great place to get some exercise along the willow-lined Blacktail Creek. For directions, call 723-3177.

Wilderness Hiking
Opportunities abound around Butte for hiking to remote alpine lakes, pristine meadows and mountain peaks. Nearby areas are the Pintler Wilderness, Humbug Spires, the Highlands and along the Continental Divide Trail. For detailed maps, you can contact the U.S. Forest Service at 494-2147.

Mountain Biking and Tour Cycling
Mountain biking and tour cycling are popular in the Butte area. Butte is the hometown of Tour de France veteran Levi Leipheimer who first trained on area roads like Harding Way. For details about tour cycling and mountain biking in the Butte area, call 494-7700.

Fishing
Trout fishing around Butte is some of the best in the West. Whether you drown bait or slap flies, you can catch (and, we hope, release) your limit in nearby blue-ribbon rivers, lakes and streams that include the Big Hole, Jefferson, and Madison Rivers. For fishing tips, equipment, or guides, call 782-3322.

Rafting, Canoeing, Kayaking
Whether you like whitewater or flatwater, there are conditions to suit your style on the nearby Big Hole, Jefferson, and Madison rivers. For info, or to rent equipment or arrange for guided tours, call 782-3322.

Golf
Despite the short season, golfers can choose between the 8-hole municipal course at Stodden Park and an 18-hole course at the Butte Country Club. Nearby at Fairmont Hot Springs, you'll find an 18-hole course aside the resort and, in nearby Anaconda, you'll find the Old Works course designed by Jack Nicklaus.

Winter

Downhill Skiing
Butte is located between a few of Montana's best downhill ski areas. These include Discovery Basin, Bridger Bowl, Big Sky, Maverick Mountain, and Lost Trail Pass. For ski conditions and directions, call 1-800-847-4868.

Cross Country Skiing
Whether you like groomed trails or pristine Telemark powder you'll find it at Moulton Reservoir, Mill Creek, on Pipestone Pass around Butte. For tips about where to go, call the Mile-Hi Nordic Club at 782-0900.

Snowmobiling
Conditions for snowmobiling around Butte are ideal in winter, especially in the highly popular area of Georgetown Lake. For information about conditions or equipment, call 782-9129.

Skating
There is plenty of ice in Butte during most of the year. We have a fine outdoor skating center, the High Altitude Speed Skating Center, open ice and hockey at the Butte Civic Center, and a Community Ice Center which is available for use from mid-October through mid-April. For details about skating opportunities and equipment, call 782-2901.

Ice Fishing
If you enjoy fishing, and you'd like to try your hand at cutting a hole in the ice, frozen lakes around Butte such as Georgetown Lake yield lake trout and kokanee (land-locked) salmon in the winter. For ice conditions, directions and equipment, call 782-3322.

Hunting
In the mountains around Butte there are many big game species that are hunted during regular and special seasons. These include deer, antelope, moose, Elk, bear and mountain lion. These same species can be observed and photographed throughout the year.

Homeland Security in 1918. Omar Bradley, one of the most famous infantry commanders in U.S. history, commanded the infantry invasion of Europe and served as Chairman of the Joint Chiefs of Staff after World War II. Before all that, as a young captain, he commanded a company of soldiers in Butte. His Company F of the 14th Infantry saw action on the streets of Butte briefly during a St. Patrick's Day riot in 1918. After that, Bradley spent most of the summer organizing a baseball team that played against local teams. A few of his soldiers who had been drafted to fight in World War I were actually from Butte. It may have been one of the few times in U.S. history that armed regular Army soldiers were stationed for combat duty in their own hometown.

Having Faith in Butte

Many Uptown churches are beautiful examples of historic architecture and well worth a visit whether you worship there are not. Still, most Uptown churches have active congregations and they would welcome you to join them for services.

Details about service times and topics are available by contacting the church of your choice. Also, the daily paper, ***The Montana Standard*** prints details about area church activities every Saturday.

Catholic

Immaculate Conception, W. Caledonia St., 723-5407
St. Patrick , Mercury & Washington, 723-5407
St. Joseph, Utah & Second, 723-5407
St. Ann, 2100 Farragut Ave., 723-4303
St John, 1500 Majors Ave., 782-8349
Holy Spirit, 3930 E. Lake St., 494-5078

Protestant

Aldersgate United Methodist, 1621 Thornton, 782-2425
Mountain View Trinity United Methodist,
203 W. Quartz, 723-4975
Gloria Dei Lutheran, 2300 Florence, 723-9182
Gold Hill Lutheran, 934 Placer, 723-4242
St. Mark Lutheran, 223 S. Montana, 782-5935
First Presbyterian, 901 W. Platinum, 782-6595
Floral Park Baptist, Floral Blvd. 494-3609
First Baptist, 201 W. Broadway St., 723-4277
Old Fashion Baptist, 494-5028
United Congregational, 2945 Bayard, 494-4567
St. John Episcopal, Broadway & Idaho, 723-4017
Church in the Valley (Baptist), 1958 Sampson, 494-3887
Park Street Baptist, 915 W. Park St., 723-9488
Temple Baptist, 723-7822
Church of Jesus Christ of Latter-day Saints,
3000 Four Mile Vue Rd., 494-3228
Seventh Day Adventist, Grand & Thornton, 782-2260
Silver Bow Bible, 494-5991
First Christian, 1200 Texas, 782-7458
Evangelical Free, 2210 Florence Ave., 782-7909
Assembly of God, 2055 Florence Ave., 723-5543
Christian Science Society, 229 N. Montana St., 723-7645

Baha'i Faith, 782-8194

Buddhist, 782-7886

Eastern Orthodox

Holy Trinity Serbian Orthodox, 2100 Continental, 723-7889

Jewish

Congregation B'Nai Israel, 327 W. Galena, 782-9330

Non-denominational

Butte Unity Truth Center, 300 S. Montana St., 494-8486

Upcoming Uptown Events!

May 31—Butte Farmers' Market runs every Saturday from 9 am to 1 pm on Main Street between Park and Broadway in Uptown Butte from May 31 to Sept. 27. For info, call 497-6464.
June 2—Old Number One Trolley begins regular one-and-a-half hour tours of Uptown Butte attractions four times a day—9:30 am. 11 am, 1:30 pm and 3:30 pm —from the Chamber Visitor Center at 1000 George Street. Tour guides provided by Main Street Butte. For details, call 723-3177 or visit www.butteinfo.org.
June 2 — Bus tours to Our Lady of the Rockies begin from Butte Plaza Mall. For details, call 782-1221or visit web site at www.ourladyoftherockies.org.
June 18 — Lunch in the Park begins at Emma Park in Uptown Butte. Great food and live music every Wednesday from 11 am to 2 pm through August 20.
June 19—A Concert for Montana at the Mother Lode Theatre featuring Eden Atwood and Rob Quist. Fort details, call 723-3602.
June 28-July 4—Freedom Festival. Fireworks on the Big M the night of the 3rd and 4th of July parade down Harrison Avenue the next day. For details, contact Butte Celebrations at 782-0742.
July 1 — New Angel Island Exhibit "Gateway to Gold Mountain" opens at Mai Wah Museum at 17 W. Mercury Street.
July 10-12—Uptown Krazee Daze. Uptown goes berserk with deals galore and lots of fun events for parents and kids.
July 26-27—Butte Uptown Criterium Bike Race and State Champion Time Trial. For details, call 723-7607.
July 31-Aug. 2—Evel Knievel Daze. Native son and motorcycle daredevil Evel Knievel returns home to celebrate his roots with friends, family and fans from around the world. For details, visit www.knievelweek.com.
August 8-10—AnRiRa, Montana Gaelic Cultural Society Festival in Uptown Butte. For details, visit www.mgcsonline.org.

FOR THE LOW DOWN ON WHAT'S UP, VISIT WWW.MAINSTREETBUTTE.ORG
Main Street Butte
P.O. Box 696
Butte, MT 59703
406-497-6464

That's Why the Lady Needs a Tram. The 80-ton, 90-foot statue on the Continental Divide that overlooks Butte stands at 8,510 feet above sea level - 3,500 feet above Butte. Our Lady has dimensions that rival the Statue of Liberty. Her nose is four feet long, her eyes are two feet wide, and her lips are three feet wide. A tram is planned to carry visitors from the valley below to visit the statue. Meanwhile, bus tours are available during the summer to the base of the statue. For details, call 782-1221 or visit www.ourladyoftherockies.org.

I want to be a 2005 member:

☐ STUDENT/SENIOR		$15 A YEAR
☐ INDIVIDUAL/FAMILY		$30 A YEAR
☐ FRIEND/NON-PROFIT		$60 A YEAR
☐ BUSINESS		
1-10	EMPLOYEES	$125 A YEAR
11-25	EMPLOYEES	$150 A YEAR
26-50	EMPLOYEES	$200 A YEAR
51-100	EMPLOYEES	$300 A YEAR
101-200	EMPLOYEES	$400 A YEAR
201+	EMPLOYEES	$500 A YEAR

Name (business & individual)

Address

Owner/Manager

Contact Person

Phone

e-mail & web site

Method of Payment

☐ Check - Make Check Payable to Mainstreet Uptown Butte ☐ Bill Me

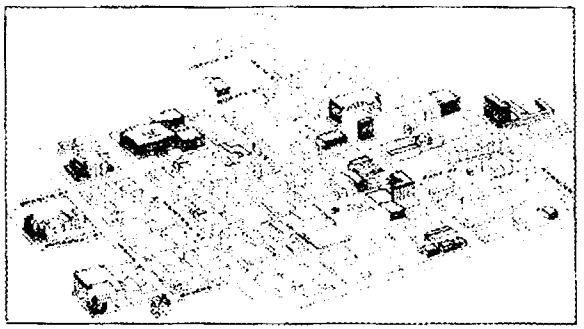
Signature

Mail your membership form and check to:

Mainstreet Uptown Butte
P.O. Box 696
Butte, MT 59703
(406) 497-6464

For details about ways you can donate your time or other resources, visit www.mainstreetbutte.org

Our Service Area



While Mainstreet Uptown Butte strives to make the heart of the Uptown district clean and safe, we also work in the broader area of Butte that is delineated by Excelsior Avenue on the West, the Berkeley Pit on the East and from Walkerville on the north to Front Street on the south.

Member Benefits

- ✔ Online directory listing with web link
- ✔ High Impact Paint Program grants
- ✔ Uptown Bucks premium program
- ✔ Available Property listings
- ✔ Restaurant guide
- ✔ Shopping guide
- ✔ Tree and flower purchases
- ✔ Uptown Events Calendar
- ✔ UPtown UPdate e-mails
- ✔ Networking opportunities with members including our annual member dinner
- ✔ Window Sticker and membership card

EXHIBIT 16
DATE 3/31/05
SB 146

MAINSTREET UPTOWN BUTTE

P.O. Box 696
Butte, MT 59703
(406) 497-6464
www.mainstreetbutte.org

MEMBERSHIP BROCHURE

Mainstreet Uptown Butte works to rejuvenate Uptown Butte, Butte, Montana's traditional central business district.

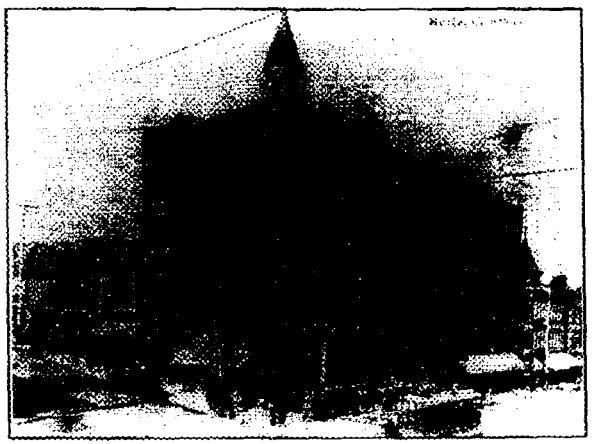
A century after its heyday, Butte, Montana remains scarred but largely unscathed by time. Butte remains rich in history, art and culture in the midst of the mountains and valleys of Southwest Montana.

Butte is one of the largest National Historic Landmark Districts in the country, with more than 4,000 historic structures still intact on the Hill. These include some of the country's first multi-story "skyscrapers," elegant hotels, banks, boarding houses and mansions, Victorian homes, and miner's cottages.

A walk along any Butte street lined by these buildings makes it easy to imagine what it must have felt like to live here during the days when millionaires and miners alike built one of the West's greatest cities.

Butte's wealth of attractions, like the ore beneath the surface can remain hidden from anyone driving by on the Interstate highways. We invite you to come up and take a closer look.

You may decide, as many have, that the greatest treasure here is the quality of life and decide to invest yourself in Butte's future.



Where Did We Come From?

Since 1999, Mainstreet Uptown Butte, a 501 (c)(3) non profit organization, has been affiliated with the National Trust for Historic Preservation's Main Street Center. In 2000, the Butte Uptown Association merged with Mainstreet and elected to have the organization represent the interests of small businesses in the Uptown district. Mainstreet Uptown Butte relies on the input and support (through dues and volunteer efforts) of its members—nearly 150 businesses, non-profits, and individuals with the common interest of wanting to see Uptown Butte thrive again.

What's The Big Idea?

The idea is simple. If businesses in a historic district remain viable, they will help preserve historic buildings by building on the assets in downtown communities. This basic goal is approached from four directions.

Design—improve the physical appearance of streets, buildings, window displays, parking areas, signs, sidewalks, and other elements that convey a visual message that Butte is a clean and safe place to live and to visit.

Promotion— package and present Uptown's most attractive qualities through retail promotional events, festivals, and ongoing programs to build positive perceptions of the district.

In this area, Mainstreet is the primary sponsor for the Annual Butte Christmas Stroll, Ice Sculpting Contest, and the Butte Farmers' Market. We sponsor retail promotional events such as Uptown Krazee Days in July, Ghost Tours in October, a Bite of Butte restaurant events, and Uptown Art Walks.

We also help to promote and support our major annual festivals of St. Patrick's Day, 4th of July Freedom Festival, Evel Knievel Days, and the An Ri Ra Irish Festival.

Organization—work closely with community stakeholders to improve communication and create a common pathway toward economic viability.

Economic Restructuring—strengthen the local economy by helping small businesses to expand, recruit new businesses to complement existing businesses and work with property owners to convert unused Uptown space into productive properties.

Where Do We Go From Here?

We are planning several projects for 2005. In design, we plan to paint buildings, plant trees and flowers, and clean Uptown streets and lots. Uptown's image will be brightened by the continuing community effort to light up the headframes on the Butte Hill.

In promotions, we are planning special events, contests and retail promotions such as the Farmers' Market, Crazy Days and Butte Christmas Stroll, and to support events planned by others, including Lunch in the Park, the Freedom Festival, Evel Knievel Days and the An Ri Ra Irish Festival.

EXHIBIT 7
DATE 3/31/05
SB 146

STATEWIDE PUBLIC DEFENDER SYSTEM
RECONCILIATION OF ACLU AND STATE SYSTEM ESTIMATES

		Fiscal 2006	Fiscal 2007	2007 Biennium	
A	ACLU Estimates	$ 19.5	$ 22.2	$ 41.7	
B	State Estimate	0.9	13.8	14.7	
C	Difference	$ 18.6	$ 8.4	$ 27.0	
D	Reasons for Difference				
	1 Current System Costs Transfer not effective until 7/1/06	10.6	-	10.6	The Office of court administrator and the counties and cities will continue to provide service until 7/1/06
	2 Additional 79 FTE	0.7	2.7	3.4	I counted 169 FTE in the ACLU estimates - the state has 90 FTE
	3 Additional Operating Costs	0.1	1.6	1.7	Probably relates to additional FTE, greater travel budet, and $1 million more in rental costs.
	4 Additional Contract Services	6.2	4.6	10.8	I took the ACLU number of $6.4 million & reduced it by the $1.8 million that the state expects to get from county/city contribution.
	5 Information Technology	1.0	(0.5)	0.5	Part of this is a shifting between years - state assumed that implementation would be early in FY07
	Subtotal of differences	$ 18.6	$ 8.4	$ 27.0	

EXHIBIT 18
DATE 3/31/05
SB 146

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

Federal poverty level

	1X	150	200	250
1	9,570	14,355	19,140	23,925
2	12830	19,245	25,660	32,075
3	16,090	24,135	32,180	40,225
4	19,350	29,025	38,700	48,375
5	22610	33,915	45,220	56,525
6	25,870	38,805	51,740	64,675
7	29,130			
8	32,390			

add 3,260 for each additional person.

Pg 17 Sec 15

poverty level Sliding Scale

?

~~Sliding~~ Sliding poverty level ?

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 3/31/05

NAME	PRESENT	ABSENT	EXCUSED
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE		X	
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE Date 3-31-05

Bill No. SB-146 **Sponsor(s)** Sen D. McGee

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Bill Leeman	Butte Silver Bow	X		X
Gordon Morris	MACo	X		
Dennis Ahlgos	Yellowstone Co	X		
DAN SCHAAR	" "	X		
Charles Brooks	" "	X		
Judi Hood	Lewis & Clark City Pub Def	X		
William Burks	self	X		
Colleen Ambrose DOC	DOC	X		
Lesly Stall	Missoula County	✓		
Ken Waterman	Self	✓		
Jacqueline Lenmark	ACLU	✓		
[illegible]	GOV	✓		
Eric Olson	Cascade County Pub Def	✓		
Pam Bucy	DOJ	✓		
Tami McCall	City of Billings	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE-CHAIRMAN RON STOKER**, on April 1, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: None, 4/5/2005
Executive Action: HB 794, SB 199, 200, 429, 430, 468, 493-Tabled; SB-504, 80, 207, 381, 407-Do Concur; SB-146, 452, 119, 344, 122, 196, 279, 406-Do Concur

As Amended, SJR 6, SB 402, 378, 447, 485-Tied

(Please Note: REPS. LANGE, RICE, KOOPMAN, and PARKER absent from the room.)

EXECUTIVE ACTION ON SB 146

Motion: REP. WILSON moved that SB 146 BE CONCURRED IN.

Motion: REP. MCGILLVRAY moved that SB 146 BE AMENDED with an amendment that was distributed at the hearing, 146.08. ***{Tape: 1; Side: A; Approx. Time Counter: 0 - 39; Comments: This amendment adds Flathead County to the list of amendments. }***

Vote: Motion that SB 146 BE AMENDED carried unanimously by voice vote. (REPS. LANGE, RICE, KOOPMAN and PARKER voted by proxy vote.)

Motion: REP. NOENNIG moved that SB 146 BE AMENDED with an amendment that was distributed at the hearing, 146.20. ***{Tape: 1; Side: A; Approx. Time Counter: 39 - 60; Comments: Technical Correction by Sen. McGee to make entitlement share work.}***

Vote: Motion that SB 146 BE AMENDED carried unanimously by voice vote. (REPS. LANGE, RICE, KOOPMAN and PARKER voted by proxy vote.)

Motion: REP. MCGILLVRAY moved that SB 146 BE AMENDED with an amendment that was distributed at the hearing, 146.09. ***{Tape: 1; Side: A; Approx. Time Counter: 60 - 80; Comments: This is for sharing of the audit costs between co's. and state and ret'd to 50-50.}***

Vote: Motion that SB 146 BE AMENDED carried unanimously by voice vote. (REPS. LANGE, RICE, KOOPMAN and PARKER voted by proxy vote.)

(The committee discussed the bill prior to making a motion to Do Concur As Amended.)

Discussion:

REP. GUTSCHE spoke to the committee about the MACo amendment. **SEN. MCGEE** was in the room and also discussed the amendments and the bill with the committee members.

Motion: **REP. GUTSCHE moved that SB 146 BE AMENDED** with an amendment that was distributed at the hearing, MACo amendment. ***{Tape: 1; Side: A; Approx. Time Counter: 80 - 220; Comments: For P. 86, L. 27, Strike Sub Sect.7 insert new Sub. Sect. 7}***

(Please Note: REP. RICE and REP. KOOPMAN returned to the room.)
(Please Note: REP. WILSON absent from the room.)
Discussion:

The committee continued to discuss the amendment that **REP. GUTSCHE** had put forth previously.

Motion: **REP. NOONAN moved that THE AMENDMENT BE DIVIDED (as a matter of personal right, no vote necessary.) THIS WOULD BE TO 1) SEGREGATE THE DATES TO ONE-HALF (50%) EACH, FROM THE 2) AMOUNT OF PERCENTAGES EACH DATE.**

Discussion:

Mr. MacMaster explained what **REP. NOONAN** would like to accomplish by the division of the amendment.

Vote: **Motion that SB 146 BE AMENDED carried 15-3 by voice vote with REP. EVERETT, REP. LANGE, and REP. WARD voting no.** ***{Tape: 1; Side: A; Approx. Time Counter: 220 - 512; Comments: Change to two dates with 50% each date.}*** **(REPS. LANGE and PARKER voted by proxy vote.)**

Vote: **Motion that SB 146 BE AMENDED carried 10-8 by roll call vote with REP. BECKER, REP. EVERETT, REP. LANGE, REP. NOONAN, REP. RICE, REP. SONJU, REP. STOKER, and REP. WINDHAM voting no.** ***{Tape: 1; Side: B; Approx. Time Counter: 0 - 44; Comments: Change to 12.5% from 25% and 25% from 50% each date.}*** **(REPS. LANGE, PARKER and WILSON (REP. WILSON voted with REP. PARKER on amendment) voted by proxy vote.)**

Motion: **REP. NOENNIG moved that SB 146 BE AMENDED** with an amendment that was distributed at the hearing.)

Discussion:

The committee discussed the amendment that would remove Butte as the city that the Public Defenders Headquarters would be located in.

REP. NOENNIG without objection WITHDREW THE AMENDMENT.
{Tape: 1; Side: B; Approx. Time Counter: 44 - 145}

Motion/Vote: REP. STOKER moved that SB 146 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote. (REPS. LANGE, PARKER and WILSON voted by proxy vote.) (REP. PARKER to carry.)
{Tape: 1; Side: B; Approx. Time Counter: 145 - 160}

EXECUTIVE ACTION ON SB 80

Motion: REP. STOKER moved that SB 80 BE CONCURRED IN.

Discussion:

REP. HARRIS proposed to postpone action on SB 80 until HB 91 is resolved. **CHAIRMAN RICE** ruled to go ahead with Executive Action on SB 80 now.

Motion: REP. HARRIS moved that SB 80 BE AMENDED.
EXHIBIT(juh69a01)

Discussion:

There was discussion among the committee members about the amendment.
{Tape: 1; Side: B; Approx. Time Counter: 160 - 295}

Vote: Motion that SB 80 BE AMENDED failed 8-10 by roll call vote with REP. CLARK, REP. GUTSCHE, REP. HARRIS, REP. MCGILLVRAY, REP. NOENNIG, REP. NOONAN, REP. PARKER, and REP. WINDHAM voting aye. (REPS. LANGE, PARKER and WILSON voted by proxy vote.)

Vote: Motion that SB 80 BE CONCURRED IN carried 11-7 by roll call vote with REP. CLARK, REP. EVERETT, REP. KOOPMAN, REP. RICE, REP. SONJU, REP. WARD, and REP. WINDHAM voting no. (REPS. LANGE, PARKER and WILSON voted by proxy vote.) (REP. HARRIS to carry.)
{Tape: 1; Side: B; Approx. Time Counter: 295 - 335}

EXECUTIVE ACTION ON SB 504

Motion/Vote: REP. STOKER moved that SB 504 BE CONCURRED IN. Motion carried 17-1 by voice vote with REP. WINDHAM voting no. (REPS. LANGE, PARKER and WILSON voted by proxy vote.) (REP. STOKER to carry.)
{Tape: 1; Side: B; Approx. Time Counter: 335 - 372}

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 146** (third reading copy -- blue) **be concurred in as amended.**

Signed: Diane Rice
Representative Diane Rice, Chair

To be carried by Representative John Parker

And, that such amendments read:

1. Page 25, line 3.
Following: "subsection"
Insert: ", as adjusted pursuant to subsection (3)(a)(i),"

2. Page 86, line 28.
Following: "On"
Strike: "July 1, 2006"
Insert: "January 1, 2007, and on January 1, 2008"

3. Page 86, line 30.
Strike: "25%"
Insert: "12.5%"
Strike: "100%"
Insert: "25%"

4. Page 88, line 29.
Following: "MISSOULA COUNTY,"
Insert: "Flathead County,"

5. Page 89, line 13.
Following: "AUDITOR FOR"
Insert: "50% of"

Committee Vote:
Yes 18, No 0.

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4/01/05

6. Page 89, line 29.
Following: "MISSOULA COUNTY,"
Insert: "Flathead County,"

- END -

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 4/1/05

NAME	PRESENT	ABSENT	EXCUSED
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE		X	
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X	(late)	
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

HOUSE OF REPRESENTATIVES

Roll Call Vote

JUDICIARY COMMITTEE

DATE 4/1/05 BILL NO SB146 MOTION NO. 1

MOTION: Segregated Amend 12.5 % 25 %

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR		X	
REP. ARLENE BECKER		X	
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT		X	
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE		X	X
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN		X	
REP. JOHN PARKER	X		X
REP. JON SONJU		X	
REP. JOHN WARD	X		
REP. BILL WILSON	X		X
REP. JEANNE WINDHAM		X	
REP. DIANE RICE, CHAIR		X	

10/8

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 4/1/05 BILL NO 146 MOTION NO. 2
MOTION: SB 146 DeLong Do Pass as Amended

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		X
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		X
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		X
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	X		

10/0

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COMMITTEE PROXY

DATE 4-1-05

I request to be excused from the House Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with George Everett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
SB 146 McNeil 1-3 AMENDS	✓	

Rep. [signature]

(Signature)

COMMITTEE PROXY

DATE 4-1-05

I request to be excused from the House Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Rep. Stoker

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
SB 80 H-		
8007 AJH		X
SB 80	X	
SB 504	X	
556 Hoovar Amend	10/8	X
556 + 602 D	10/8	X
556	9/9	X
SB 279 A12901	X	
SB 279 + Amend 9	10/8	X
SB 402 9/9	X	
SB 406 Aker	X	
SB 406 + AM	X	

SENATE BILL/AMENDMENT	AYE	NO	
SB 146 McGee Amend's 1-3	✓		Passed 18-0
McGee Amend 7		✓	Passed 14-4
" "		✓	Passed 10-8
SB 146 as amended	✓		Passed
SB 196 Amend	X		
SB 196 + Amend		X	
SB 196 + Amend		X	10/5
SB 468 Aken Noorm	X		
SB 468 + Amend TABLE	X		
SB 700 Table	X		11/7
SB 122 A12201	X		
SB 122 + A12201	10/8	X	
SB 207	X		
SB 378 Table	X		9/9
SB 378	9/9	X	TIE
SB 381	X		

Rep. Michael Faugno (Signature)

COMMITTEE PROXY

DATE 3/31

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Paul Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

4/1/05

HOUSE BILL/ AMENDMENT	AYE	NO
SB 14608 Amend	✓	
SB 14620 Amend	✓	
SB 14609	✓	
Wrong Gutsche Amend 2 dates	✓	
Gutsche amend % changes	✓	
SB 146 DO concur	✓	
SB 80 Harris Amend	✓	
SB80 DO concur	✓	
Norman amend HJR 6	✓	
Amend 0602	✓	
HJR 6 DO concur	✓	
Amend SB 279	✓	
SB 279 DO Concur	✓	

SENATE BILL/AMENDMENT	AYE	NO
SB 402 DO concur		✓
SB 406 Amend	✓	
SB 406 DO concur	✓	
Amend 19601	✓	
SB 196 DO concur	✓	
Noeckel Amend SB 468	✓ ✓	
Table SB 468	✓	
TABLE SB 200		✓

Rep. John Parker

(Signature)

COMMITTEE PROXY

DATE: 4-1-05

I request to be excused from the House Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Ron Stoker

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
SB146 McGEE AMENDs 1-3	✓	
Mac Amend 1	✓	
" " 2		✓

Rep./Sen. Diane J. Rice
(Signature)

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Bill Wilson

COMMITTEE PROXY

DATE_____

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Paul Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT	AYE	NO
SB 146 DO Concur	✓	
SB 80 Harris Amend	~~✓~~	✓
SB 80 DO concur	✓	
Norton Amend HJR 6	✓	
Amend 0602	✓	
SB 402 DO concur		✓
SB 406 Amend	✓	
Table SB 199		✓
~~Table~~ SB 430	✓	
Amend SB 452 Clark Amend SB 452	✓ ✓	
SB 429 DO concur	✓	~~✓~~
SB 493 ~~Harris~~ Amend		~~✓~~

SENATE BILL/AMENDMENT	AYE	NO

Rep. Bill Wilson

(Signature)

FISCAL NOTE

Bill #: SB0146 **Title:** Statewide public defender system

Primary Sponsor: McGee, D **Status:** As Amended in House Committee

Sponsor signature Date David Ewer, Budget Director 4/6/05 Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$1,004,505	$2,989,912
State Special Revenue	$0	$0
Proprietary	$55,000	$25,000
Revenue:		
General Fund	$0	$0
State Special Revenue	$0	$0
Proprietary	$55,000	$25,000
Net Impact on General Fund Balance:	($1,004,505)	($2,989,912)

☒	Significant Local Gov. Impact	☒	Technical Concerns
☐	Included in the Executive Budget	☒	Significant Long-Term Impacts
☒	Dedicated Revenue Form Attached	☒	Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Office of the Chief Public Defender - New Office Costs

1. The function is administratively attached to the Department of Administration, but will be an independent office and held out as a new state agency.
2. There will be a change in the local government entitlement share payment law to compensate the state for local government's share of the costs of the statewide public defender system.
3. A legislative audit will be done to determine the funding responsibilities for certain counties so their share can be based on actual costs.
4. The Public Defender Commission will be appointed by June 1, 2005.
5. The commission will appoint the Chief Public Defender by September 1, 2005. The salary and benefits for the position are $71,298 in FY 2006 and $95,064 in FY 2007.
6. The chief fills all positions by the end of FY 2006, with key positions needed to administer the office hired throughout FY 2006 per below:
    a. Administrative director – annual salary and benefits - $65,547 – 50 percent in FY 2006

SB 146 #4

b. Assistant Public Defenders – 2.00 FTE with total salary and benefits of $131,094 – 25 percent in FY 2006
c. Financial Manager - annual salary and benefits of $50,571 – 50 percent in FY 2006
d. Contract managers – 2.00 FTE with total salary and benefits of $101,502 – 25 percent in FY 2006
e. Administrative Support – 2.00 FTE with total salary and benefits of $68,571
f. Accountant – annual salary and benefits - $50,751 – 25 percent in FY 2006
g. Accounting Technicians – 3.00 FTE with total salary and benefits of $119,721 – FY 2007 only
h. Indigence determination specialists – 5.00 FTE with total salary and benefits of $199,935 – FY 2007 only
i. Information tech analysts – 2.00 FTE with total salary and benefits of $101,502 – 25 percent FY 2006

7. The existing appellate defender operating budget is increased 4 fold to handle an increased caseload with current FTE. This legislation creates an office of appellate defender and a chief appellate defender hired by the chief public defender. The operating budget is increased by $192,290 in FY 2006 and $769,160 in FY 2007.
8. Operating Costs are assumed for partial office operation in FY 2006 and fully fund the office in FY 2007:
   a. Rent - $25,956 in FY 2006 and $98,880 in FY 2007
   b. Data network charges - $4,709 in FY 2006 and $17,947 in FY 2007.
   c. Furniture -- $30,900 in FY 2006.
   d. Personal computers - $27,831 in FY 2006
   e. Processing services -- $16,055 in FY 2006 and $61,158 in FY 2007.
   f. Job classifications for new and transferred staff - $30,000 in FY 2006.
   g. Travel -- $1,442 in FY 2006 and $2,884 in FY 2007.
   h. Fixed costs - $13,519 in FY 2006 and $51,500 in FY 2007.
   i. Training -- $102,528 in FY 2007.
   j. Commission meetings and travel equal $25,000 in FY 2006 and $15,000 in FY 2007.
   k. DoA support costs – payroll $25,000 each year.
   l. Information technology – FY 2006 includes $20,000 for a needs assessment. FY 2007 includes $428,000 for the purchase of a case management system (NM system) and $64,200 for maintenance.

Current costs in District Court Assumption Transferred to Office:

9. Appointed attorneys – estimated cost of $5,122,378 in FY 2007.
10. County Public Defender staff – In FY 2007, 40.00 FTE attorneys and 22.75 FTE support staff will be transferred from the county offices to the state. Estimated personal services cost amount to $1,846,863 in FY 2007.
11. Contracted attorney costs are estimated to total $619,056 in FY 2007.
12. Private investigator costs are assume to be $216,978 in FY 2007
13. Witness fees that will transfer to the Office of the Chief Public Defender are assumed to be $153,443.
14. Legal fees and other court costs that will transfer to the Office of the Chief Public Defender are assumed to be $134,717.
15. The Judicial Branch will transfer 1.50 FTE to the Office of the Chief Public Defender effective July 1, 2007 per below:
    a. One Accounting Technician at annual salary and benefits of $28,595
    b. One half-time Administrative Assistant at annual salary and benefits of $15,130.

Other County Public Defender Costs transferred to State of Montana

16. Justice court costs assumed by the state are estimated to total $1,040,000 in FY 2007 (MaCO survey)
17. City and municipal court costs transferred to the state are estimated to be $737,546 in FY 2007.

18. County funded office costs not reimbursed by the District Court Council are estimated to be $674,157.
19. All costs reduced from the entitlement share allocation have been inflated at rates consistent with other entitlement share growth. This brings the total reduction of entitlement share allocations to $2,559,141 in FY 2007.
20. A legislative audit will be conducted to determine actual costs, please refer to the Legislative Audit assumptions for further discussion.

Department of Administration

21. The Department of Administration will provide human resource services to the office. This fiscal note assumes classification costs to cover new and existing employees to the state system will total $30,000 in FY 2006. Ongoing payroll processing costs are estimated at $25,000 each year and require an additional 0.25 FTE per year with offsetting proprietary revenues.

Costs associated with representation for indigent parents in child abuse and neglect cases - new

22. These new costs would be incurred in the newly created Office of the Public Defender.
23. The Judiciary used case filing data for cases filed pursuant to 41-3-422, MCA, from the first 6 months of FY 2004 and doubled the filings to estimate a full fiscal year.
24. Currently the 1st, 2nd, 4th, 13th, 14th, 18th, 21st and 22nd Judicial Districts as well as some counties in the 7th and 12th Judicial Districts appoint counsel immediately. The cost in FY 2004 for public defender representation of the parents in these cases was $533,213. There were 241 filings in the first 6 months of FY 2004 in these districts. The average cost per case was $1,106. $533,213/(241 x 2).
25. The cost in FY 2004 for public defender representation of the parents in Judicial Districts, which don't appoint counsel immediately, was $279,360. There were 221 cases filed in the first 6 months of FY 2004 in the Judicial Districts where counsel was appointed at either the adjudication or dispositional hearing stage of the process. The average cost per case was $632. $279,360/(221x2).
26. The total increased cost is estimated at $209,508 per year. ($1,106-$632) x (221x2).
27. Assumptions are base on work done by the Legislative Fiscal Division and the Legislative Services Division for the Law and Justice Interim Committee in preparation for submission of this bill. The Office of the Court Administrator and the Department of Administration compiled additional information.

Department of Corrections

28. The proposed statewide public defender system would absorb the costs DOC currently spends on inmate public defender services for the prosecution of crimes committed in prison.
29. These costs also include expert witnesses, psychological exams and transcripts. In FY 2004, these expenses totaled $50,141.67.
30. It is assumed that the base budget in the DoC will transfer to the Public Defender Office in FY 2007 to offset costs associated with the new responsibility.

Legislative Audit

31. In accordance with section 2-7-504, MCA, the named counties are conforming to the rules of accounting for the receipt and disbursement of all money belonging to the local government.
32. Fiscal years 1999 through 2004 public defender expenditure records of each county named are readily available for both district and justice court proceedings (emphasis added).
33. The audit hours for each of fiscal year 2003 and 2004 financial audits required by the state single audit act for the six named counties averaged 720 hours per audit.
34. The average billing rate for the fiscal year 2003 and 2004 financial audit services required by the state single audit act for the named counties was $60 per hour.
35. To the extent that these expenditures were included in the annual audits of the counties, the audit requirement under section 74(2) will rely on the audit results of the annual audits under the state single audit act.

36. These audits are special purpose claims reviews of the actual costs as defined in legislation, for public defender services in justice and district courts that were not reimbursed by the office of court administrator.
37. The legislative auditor will contract for the audit services.
38. Due to the reporting deadline of April 30, 2006, we will use a limited solicitation for contracted services and anticipate 75 hours at $54 per hour for preparation of bid specifications, or $4,050.
39. The legislative auditor will provide administrative support for contract arrangements, not to exceed 25 hours per county at a rate of $54 per hour, or $8,100.
40. Contract payments will be made directly to the contractor by the county for 50% of actual audit services rendered.
41. The Office of State Public Offender will pay the remaining 50% of the audit costs.
42. At 75 hours of audit effort per fiscal year under review, the six year audit period requires 450 audit hours at a rate of $60 per hour, or $27,000 per county.
43. The legislative auditor will spend 40 hours compiling the results of the audit work at $54 per hour to meet the reporting requirement, or $2,160.
44. The audit cost will include the costs of the preparation of bid specifications, administrative support, audit costs, and report compilation costs as estimated above.
45. The total estimated costs of the above mentioned audit is $176,310.

FISCAL IMPACT:

	FY 2006 Difference	FY 2007 Difference
Public Defender Office - New		
FTE	5.50	84.25
Expenditures:		
Personal Services	294,140	2,874,486
Operating Expenses – Indigent parent	0	209,508
Operating Expenses – Inmate Public Defender Services	0	50,141
Operating Expenses	412,702	10,652,000
TOTAL	$706,842	$13,786,495
Funding of Expenditures:		
General Fund (01)	$706,842	$13,786,495
Legislative Audit		
Expenditures:		
Operating Expenses	$88,155	$0
Funding of Expenditures:		
General Fund (01)	$88,155	$0
Department of Administration		
FTE	0.25	0.25

Expenditures:		
Personal Services	25,000	25,000
Operating Expenses	30,000	0
TOTAL	$55,000	$25,000
Funding of Expenditures:		
General Fund (01)	0	0
Proprietary	55,000	25,000
TOTAL	$55,000	$25,000
Revenues:		
Proprietary (06)	$55,000	$25,000
Judicial Branch		
Supreme Court Operations (01)		
FTE	0.00	(1.50)
Expenditures:		
Personal Services	$0	($43,725)
Funding of Expenditures:		
General Fund (01)	$0	($43,725)
Judicial Branch		
District Court Operations (04)		
Expenditures:		
Operating Expenses	$0	($8,093,435)
Operating Expenses – Indigent parent	209,508	$0
Funding of Expenditures:		
General Fund (01)	$209,508	($8,093,435)
Department of Corrections		
Expenditures:		
Operating Expenses	$0	($50,141)
Funding of Expenditures:		
General Fund (01)	$0	($50,141)
Department of Administration		
Entitlement Offset		
Expenditures:		
Transfers (Entitlement Share Allocation)	$0	($2,559,141)

Funding of Expenditures:		
General Fund (01)	$0	($2,559,141)
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund (01)	($1,004,505)	($2,989,912)
State Special Revenue (02)	$0	$0
Proprietary (06)	$0	$0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. The local entities will be required to pay, into a state special revenue account, 12.5% of the accrued sick leave and 50% of the vacation leave totals for each assumed employee. It is impossible to determine the impact of this but anything paid in will reduce the counties balance sheet liabilities by 100% of their current associated liabilities.
2. There will be a legislative audit of 6 counties. The costs of these audits will be split 50/50 between the state of Montana and the audited counties. The estimated total cost of these audits $176,310 in FY 2006.
3. The currently identified costs (justice court - $1,040,000 and city/municipal court - $737,546 and county office costs of $674,157) associated with justice courts and city and municipal courts will be reduced from the local entity's entitlement share with inflationary factors applied, and all costs assumed by the state of Montana.

TECHNICAL NOTES:

1. This may create an unfunded mandate for counties by stipulating that the audit costs are shared per 1-2-112, MCA.

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 146

Call to Order: By **SEN. MIKE WHEAT**, on April 13, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Rep. Diane Rice, (R)
Sen. Dan McGee, (R)
Sen. Jon Ellingson (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. John Parker (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: None.
Executive Action: SB 146

FREE CONFERENCE COMMITTEE ON SB 146

SEN. WHEAT called the Free Conference Committee Meeting on SB 146 to order. He then turned the meeting over to **SEN. MCGEE.**

SEN. MCGEE stated that he had requested a Free Conference Committee because he wanted to deal with two or three small remaining items that had not been addressed in the House amendments. He went on to say that he also wanted to address one of the amendments that had come up in the House amendments. He further explained by having a Free Conference Committee they could deal with any remaining issues that needed to be dealt with. **SEN. MCGEE** explained that items 1, 4, 5 and 6 on the House amendment had been placed on SB 146 at his request. He then explained the purpose for each of these amendments. **SEN. MCGEE** then addressed items 2 and 3 of the House amendments. He stated that he did not agree with the change on Page 86, Line 30, regarding the accumulation of vacation and sick leave. He explained that with the amendment the State would be on the hook for 50% of the vacation time of any county employee that would become a state employee on July 1, 2006, under this bill. He went on to say that he felt that it was a county expense. **SEN. MCGEE** indicated that he did not want the same thing to happen that had happened with district court assumption which had created a huge fiscal impact to the State's budget. He then stated that he would like to see that amendment stricken from the bill. **SEN. MCGEE** stated that the other two items he would like the Committee to at least consider were: Missoula County's concern that their entitlement withholding numbers are too high and the issue regarding the location of the Chief Public Defender's Office. He went on to say that the question was whether it should remain in Butte as currently worded in the bill as amended or if it should be left to the Commission to decide. **SEN. MCGEE** reiterated that the items he wanted to address were vacation payments, time frame of county payments, the Missoula issue and where the Chief Public Defender's Office should be located.

SEN. WHEAT asked the members of the House if they had any issues other than those presented by **SEN. MCGEE.**

Discussion:

REP. RICE expressed her agreement with **SEN. MCGEE** on the percentage issue. She went on to say that whenever employees came to work for the State, after recently receiving a pay raise, the vacation and sick leave were paid at the higher rate. She continued saying that he was right -- the State could get stuck.

SEN. MCGEE referred to the bill and read the language in Subsection 3, on Page 86, which pertained to salary and potential raises for employees. He went on to say that because of this language he hoped they would not have the same situation as when the assumption of the district courts took place.

SEN. WHEAT suggested that they deal with the four issues item by item. He then indicated that they would start with the vacation issue.

The committee members discussed the issues and decided to address the formula for county payments first.

SEN. MCGEE indicated that since the audit would be completed by April 2006, he would recommend to leave that particular House amendment as it was. He went on to say, since it would not hurt the State and it would help the counties, it would be best to leave it with the two-payment schedule.

Motion: SEN. MCGEE moved to change the 12 1/2% to 25% on Line 30, Page 86, and vacation to 100%.

SEN. WHEAT explained that, in effect, what they were doing was rejecting the House amendment and putting the bill back the way it was in regard to the vacation pay.

Motion: Reject paragraph 3 of the House Amendment.

REP. GUTSCHE informed the committee that under court assumption this was the way it had been and that was the reason for the amendment.

SEN. WHEAT responded that this was not court assumption, this was something completely different. He continued saying that they would be dealing with public defenders who would come on board, there were those who would not, and there were those who would decide to contract with the Public Defender's Office. He went on to say that he understood that it was what the counties wanted.

SEN. MCGEE talked about whether or not there would be any vacancy savings involved in the process.

REP. GUTSCHE proposed that in those cases where the employees did become state employees, it would be a different percentage, such as, the formula used under state assumption.

Vote: Motion to reject paragraph 3 of the House Amendment resulted in the following vote: Senate 3-0, House 2-2 with REP. RICE and REP. PARKER voting aye.

Members of the Committee then questioned the proper procedure to follow because there was not a majority vote from the Representatives. Since they were unable to gain a clear understanding of the Rules, the Committee requested that **Greg Petesch of Legislative Services** be summoned to clarify the pertinent rules for the Committee.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28.7}

Motion: SEN. MCGEE moved to reconsider the motion to reject paragraph 3 of the House Amendment. Motion carried unanimously.

Mr. Petesch informed the Committee, that with the 50/50 split in the House, should there be a split vote by the Representatives, the vote would go to the House without a recommendation.

Motion/Vote: SEN. MCGEE moved to amend Page 86, Line 30 by striking "25%" and inserting "50%". The motion carried as follows: Senate 3-0, House 3-1, with REP. LANGE voting no.

SEN. WHEAT advised that they would now deal with the issue of Missoula County's payment.

SEN. MCGEE explained to the Committee the process that had been used to ascertain the county's costs for indigent defense in justice courts and the non-reimbursed district court costs. He went on to say that the number on Line 4, of Page 28, was the amount that the Interim Committee had been given by the county. He went on to say that he had made it clear to the counties that if they needed to take up a bill in the next session to deal with some legitimate costs that the counties incurred for district courts, that were not paid by the District Court Counsel, then they would do so. He then stated that SB 146 was not the tool to do that. He further stated that the numbers reflected in the bill had been furnished by MACO and the League of Cities and Towns. **SEN. MCGEE** then informed the Committee that originally they had an audit provision in the bill rather than hard numbers. He continued saying the Interim Committee had decided that it would not be a good idea to have the Audit Division be responsible for deciding amongst conflicting information which information to use to come up with the hard-dollar amount. **SEN. MCGEE** then talked about the conflicts regarding the dollar amount that had been established for Missoula, and the resulting discussions that had taken place along with the decisions that had been made by the Committee. **SEN. MCGEE** suggested that they leave the hard dollar amounts as they were presently in the bill and let the next legislative session deal with the issue if there were adjustments to be made.

REP. RICE stated that she agreed with **SEN. MCGEE.** She went on to say that if they picked one county or city and started to negotiate with them, the rest would probably want to do the same. She further stated that it would all even out in the end.

REP. GUTSCHE referred to the bottom of Page 28 and stated that Anaconda-Deer Lodge and Butte-Silver Bow had already been changed. She went on to say that because of this there had been a precedent set. **REP. GUTSCHE** then addressed the issue of the information received from Missoula and the possibility of conflicting information having been provided. She then talked about the letter she had received indicating actual dollar amounts that had been spent, regardless of what may or may not have been reported. She continued saying that she felt it would be fair to lower Missoula's dollar amount as at least two other counties had seen issues and had their dollar amounts lowered.

SEN. ELLINGSON stated that he concurred with the observations of **REP. GUTSCHE.** He went on to say that he did not understand why they could not follow the precedent that had already been set, since they had received better numbers from Missoula. He continued, saying that he did not feel it was fair to use the old numbers since they had now received accurate figures to use.

SEN. MCGEE addressed the issue of the changes to the Butte and Anaconda figures, and explained the reason for those changes.

SEN. ELLINGSON stated that he felt it would be educational for the Free Conference Committee to hear from the representatives from Missoula County so they could explain the reason for the $300,000 figure that had originally been presented and the reason for the figure being presented now.

SEN. WHEAT explained that the $310,000 figure had come from the Budget Division. He went on to say that the Division had requested the information from the various counties, and then made the present calculations from the information they had received. He continued saying that the dispute was between the Budget Division's calculations and Missoula County's calculations.

SEN. WHEAT asked **SEN. MCGEE** what would happen if they amended the bill to reflect the $172,600 amount and then found out in two years that the amount should have been the $310,000 amount. He further asked if Missoula County would have to pay the difference with interest and, likewise, if they left the amount $310,000 and it should have been $172,600, would the State have to pay the difference with interest. **SEN. MCGEE** asked if he could have **Judy Paynter** of the Budget Office to respond to the question.

Judy Paynter, Budget Office, explained that the Audit would be known in April 2006. She further stated that if the Audit came back at $310,000 would that be the adjustment that would be made for fiscal 2007. She went on to say that if the number came back at $190,000 the next session would have to consider that adjustment.

Valencia Lane stated that there was no automatic adjustment. She went on to say there was a provision in the audit provision that states the Law and Justice Interim Committee will prepare legislation to be presented to the 2007 Legislature to adjust the base.

Ms. Paynter then stated that as this all affects fiscal year 2007 and the Legislature will be in session in fiscal year 2007 to deal with those adjustments, it could be dealt with at that time. She went on to say that, because of this situation, if there were adjustments they would be minor.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 27.8}

REP. GUTSCHE stated as a point of fact, that any one of the numbers could be wrong, and they would not know at this time.

REP. RICE asked **Ms. Paynter** if there would be any interest paid by the State. **Ms. Paynter** responded to her knowledge there would not be any interest paid by the State or the counties.

SEN. MCGEE stated that it was important for the Free Conference Committee to understand that it had been difficult and frustrating to get accurate numbers regarding anything to do with the courts. He went on to say that **Harry Freebourn** was the individual that had called the counties, therefore, if they had any questions about the numbers they could ask him. He further indicated that **Brent Doig** and others, with the Budget Office, were the ones who had been crunching the numbers. He then stated that Missoula had the perspective that they had court costs that had never been reimbursed that probably should have been. He then stated that they also had philosophical issues that would also factor in. **SEN. MCGEE** added that what they did not have in front of them were the actual numbers, because until the audit was completed, no one would know what the actual numbers are. He then addressed the three different dollar figures they had in front of them and indicated they could make a choice as to which one they were going to use.

REP. PARKER asked if there was a motion on the table. **SEN. WHEAT** stated that they were just discussing the issue.

REP. PARKER stated that he felt that they should make a motion.

SEN. WHEAT responded that he felt it was healthy to discuss the issue before they got into making a decision on which way they were going to vote.

SEN. ELLINGSON made a couple of observations. He stated that all of the other entities had an opportunity to look at these numbers and he did not think that it was an unreasonable assumption to make, that if they thought they were really out of whack, they would be hearing from them also. He went on to say that it had been through a venting process and the only county that had come forward saying they were way off base was Missoula County. He went on to say that he wanted to hear from all sides of the issue, therefore, he would like to hear from the representatives of Missoula County and from **Mr. Freebourn**, to find out how they had reached the numbers they had in front of them.

SEN. WHEAT responded that he would have **Mr. Freebourn** testify and then they would pick one representative from Missoula County to testify. **SEN. ELLINGSON** suggested **Ann Mary Dussault** from Missoula County.

Mr. Freebourn informed the Committee that the figures were all estimates. He stated that the way they had received the numbers was through a written survey and through telephone calls to verify information that had been provided by the surveys. He then provided the Committee with information regarding the telephone surveys he had done and the information he had requested from those offices. He further indicated they had asked all of the public defender's offices to provide them with a copy of their budgets, and Missoula was the only office that had not provided one. He concluded by reminding everyone that what they had were estimates and they had been obtained from a variety of places. This was the reason that the bill had an audit provision.

SEN. WHEAT asked **Mr. Freebourn** how they had come up with the numbers they had for Missoula County. **Mr. Freebourn** replied, to the best of his knowledge, they received the information from individuals in the Missoula office and also, he and **Sherri Heffelfinger** had gone to Missoula and talked with the Chief Public Defender.

SEN. MCGEE asked **Mr. Freebourn** if it would be fair to say, at the time they had been inquiring about the costs, that the counties may have had the perception that somehow the State was going to end up paying for some of the program. **Mr. Freebourn** replied at

the time they were getting the cost estimates there had been no provisions for any reimbursements by the counties and cities.

REP. GUTSCHE asked **Mr. Freebourn** if he had asked for a certain level of employee when they had called for information. **Mr. Freebourn** replied that they had always tried to talk with the Chief Public Defender. He went on to say that he did not remember talking to a county fiscal person in any case. He further stated that in many instances he had talked to staff and requested that they get the information and provide it to him.

SEN. ELLINGSON asked **Mr. Freebourn** if he had ever inquired of anyone in Missoula County as to why they had never provided a copy of the budget. **Mr. Freebourn** replied that the reason they had asked for the budget was because they wanted to see what their county budgets were so they could compare them to the estimates that they had, so they could do a sanity check on what they were doing.

Ann Mary Dussault, Administrative Office, Missoula County, stated to her knowledge there were only two people in Missoula County who could certify numbers. Those individuals are Dale Nichol, Chief Fiscal Officer, and herself. She went on to say that a secretary in the Public Defender's Office could not certify numbers and that was the individual who had been called. **Ms. Dussault** informed the Committee that this was the first time she had heard that there was a request made to Missoula County for a copy of the public defender budget. She provided the Committee with the same numbers that had been provided to them by Linda Stoll, and stated that they were the actual numbers. She then commented on what problems Missoula County would incur if they were to use the $310,000 figure for the entitlement. She concluded by asking the Committee to use the number of $172,600.

Motion: REP. LANGE moved that on Page 28, Line 4, they strike "$310,000" and insert "$172,600".

REP. LANGE explained that he was making the motion because if it was his county he would be complaining. He further stated that with the State having a $300,000,000 surplus they should not be quibbling over this small amount of money for a county's costs. He continued saying that he was certain if there was a discrepancy found after the audit, the State would see that it was corrected.

REP. PARKER stated that he would be supporting the motion. He went on to say that he knew how hard it had been to pin the numbers down. He continued saying, that based on the points that **SEN. MCGEE** had made, there were good mechanisms in place in the

bill to harvest good numbers and improve them. He then said that if they should find out any of the numbers were incorrect, they had a good-built in device to address that concern.

SEN. MCGEE responded that he would oppose the motion because he personally believes that counties inflated costs when they thought the State was going to pay for it.

SEN. ELLINGSON stated that he felt something had fallen through the cracks in obtaining the information from Missoula. He went on to say that he felt that Missoula County had provided compelling testimony as to the accuracy of the numbers they were providing and it should be addressed. **SEN. ELLINGSON** then stated that he stood in support of the motion.

SEN. WHEAT stated that he was frustrated with the process, because this process had been going on for a long time and the counties knew they had to get their numbers in. He then stated that he shared **SEN. MCGEE'S** frustration. He continued saying that for purposes of moving this extremely important bill forward and trying to show some compromise he would support the motion.

REP. GUTSCHE stated that the audit would fix whatever needed to be fixed, therefore, she felt they could go forward with the process.

Vote: The motion to strike "$310,000" and insert "$172,600" on Line 4, Page 28, carried as follows: Senate 2-1, with SEN. MCGEE voting no and House 3-1, with REP. RICE voting no.

Valencia Lane informed the Committee that there would need to be a corresponding change in HB 2.

SEN. WHEAT stated that the last issue they had to deal with was the issue of the locating the Chief Public Defender's Office in Butte.

SEN. WHEAT stated that he felt that the Commission should decide where the Chief Public Defender's Office should be located. He then explained why he felt that the Commission should make that decision.

REP. PARKER talked about the arguments he had heard regarding where the Chief Public Defender's Office should be located.

Motion: REP. PARKER moved that on Page 10, Line 27, the Office of the Appellate Defender shall be located in Helena.

REP. PARKER asked the Committee to consider this compromise approach. He stated that in working on this issue they had tried very hard to structure a system that was immune from politics. He further stated that they needed to construct a firm firewall between the activities of the Chief Public Defender and the activities of the Appellate Defender because of the conflicts that could arise.

REP. LANGE asked **REP. PARKER,** if they accepted this amendment, what portion of the staff would be located in Butte and how many would be located in Helena. **REP. PARKER** replied that he did not have that answer because that was an allocation that would have to be defined by the Commission.

REP. LANGE asked **REP. PARKER** if this approach would allow for the main office to be located in Butte and the Commission deciding where the Appellate Office would be located. **REP. PARKER** replied that the main office would indeed be in Butte, however, his amendment would locate the Appellate Office in Helena.

REP. GUTSCHE asked **REP. PARKER** how the supervision would work with the Chief Public Defender's Office in Butte and the Appellate Defender's Office in Helena. **REP. PARKER** replied that supervision from afar was an inherent piece of the entire puzzle. He went on to say that the Chief Public Defender would be administering 11 different Public Defender Regions tasked with insuring, at a constitutional level, adequate representation throughout the State. He went on to say that it would be an administrative task for the implementation of uniform standards across the State and implementation of quality work in each of the 11 regions.

REP. RICE asked **REP. PARKER** if the Chief Public Defender would be in Butte and the Appellate Public Defender in Helena. **REP. PARKER** replied that was correct.

SEN. ELLINGSON asked if they could hear from the representative from the Department of Administration.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 34.3}

Steve Bender, Deputy Director, Department of Administration, stated that his agency would be intimately involved in creating the Chief Public Defender's Office. He went on to say that they would be identifying the people, converting them to State employees, contracting people, servicing the payrolls, and creating the accounting setup to provide the answers needed for the next session. Furthermore, they will be setting up the IT environment for the new office. **Mr. Bender** continued saying that

this would be the 9th largest generally funded agency in the State of Montana with 85 employees. He then stated that they would be having at least one person from their office in the new building basically full time next session. He concluding saying that because of all that was involved, the logistics were going to matter.

REP. RICE left to attend another Conference Committee.

REP. LANGE stated that he felt it was the job of the Legislature to decide where the office was going to be located. He further stated that he was against having the office in Helena because he wanted it insulated, as much as possible, from the halls of government. He continued saying that he felt Butte made good sense because of its proximity to the Capitol should the Chief Public Defender need to come to Helena. He concluded by saying that he stood in support of **REP. PARKER'S** motion.

SEN. ELLINGSON stated that he had a soft spot in his heart for Butte and felt that it would attract some good professionals to take advantage of all of the amenities offered by Butte and the surrounding area. He went on to say that he felt **REP. PARKER** was correct in the need for separation of the Public Defender's Office and the general administrative tasks. He continued saying that he felt it was a creative compromise and he would support the amendment.

Vote: Motion that on Page 10, Line 27, the Office of the Appellate Defender shall be located in Helena carried as follows: Senate 3-0, House 4-0 with REP. RICE voting aye by proxy.

Motion: SEN. MCGEE moved to strike "the office must be located in Butte, Montana' on Line 19, Page 8.

SEN. MCGEE explained if they struck this language it would leave it to the Commission where the office should be located.

Ms. Lane indicated that almost all State agencies are located in Helena, Montana. She then stated that if he wanted the Commission to choose where the office would be located he would have to state that in his amendment.

SEN. MCGEE withdrew his original motion.

Motion: SEN. MCGEE moved to insert "the Commission shall determine the location of the Office of the Chief Public Defender" on Page 6, Line 25.

SEN. MCGEE explained that he was not trying to exclude Butte. He went on to say that he felt there were some practical issues that they needed to address. He then commented on his concerns regarding the costs for travel he felt would be incurred with the Office being located in Butte. He concluded by saying that in the end they needed to look at the benefit to the entire State not just one issue. He further stated that he agreed that the Legislature should make the decision, but at this point he did not want to say Helena.

REP. GUTSCHE asked **SEN. WHEAT** how this amendment would work with **REP. PARKER'S** amendment. **SEN. WHEAT** stated that it would not matter, what it would do is have the Commission determine where the Chief Public Defender's Office would be located. He went on to say that with the amendment the bill would simply say that the Appellate Division would be in Helena.

SEN. MCGEE asked the Committee to remember that there were going to be 11 regional offices, therefore, simply because the Chief Public Defender's Office would be Helena, it would not mean that a lion's share of people would be in Helena. He continued saying that the idea that there would not be a regional office in Butte was without merit.

SEN. ELLINGSON asked **SEN. MCGEE** what the Chief Office would consist of in terms of bodies.

SEN. WHEAT indicated that as he remembered there would be a Chief Public Defender, an Administrative Assistant and others.

SEN. MCGEE answered that it looked like there would be a Chief Public Defender, an Administrative Director, Assistant Public Defender, Financial Manager, Contract Manager, Administrative Support, Accountant and three Accounting Technicians for a total of 12 to maybe 15 individuals.

SEN. ELLINGSON inquired if that was the group that would oversee the entire Public Defender System throughout the State. **SEN. MCGEE** answered 'yes'. He went on to say in different regions there would be a deputy public defender who would be the regional public defender.

SEN. ELLINGSON made the observation that this would be an office that would be administering the whole statewide program. He continued stating that he did not see any benefit to locating the Chief Public Defender's Office in Helena as opposed to Butte or any other location. **SEN. ELLINGSON** then spoke about the extra costs that would be incurred if the office was located somewhere

other than Butte. He concluded, re-emphasizing that he would like to see the office located in Butte.

REP. PARKER addressed comments made by **Mr. Bender** regarding lobbying, the idea that the Chief Public Defender's Office needed to be located in Helena, the costs to be incurred as a result of travel and setting up of computers.

REP. LANGE expressed his reasons for not having the Chief Public Defender's Office in Helena. He further stated that the decision as to where the office should be located was a political decision not one that should be made by the Commission. He went on to say that they needed to make that decision, and take the stand the Legislature is in charge. He concluded saying that it would cost the Commission less to have the office space in Butte, housing costs in Butte are lower and, finally, it would put the measure to bed.

SEN. WHEAT indicated that he disagreed with regard to the political aspect of the issue. He went on to say that they did not know what the costs were going to be and that their estimates were probably way too low, therefore, it was probably going to be a huge issue for the next session. He continued, saying that maybe Butte is the best place for the office, however, he would like to see the Commission make the decision as to where the office should be. He expressed his concern that there was no fiscal note, therefore, they did not have any idea what the cost was going to be. He concluded by saying he did not like the idea that the option of Butte being the location for the Office was brought forward at the very last minute.

SEN. MCGEE asked if the amendment was going to be on Page 6.

Ms. Lane suggested that they place the amendment on Page 7, Line 23 and make it a new number 9. **SEN. MCGEE** agreed that would be a place for the amendment.

Vote: Motion to insert "the Commission shall determine the location of the Office of the Chief Public Defender" on Page 7, Line 23, new number 9, failed as follows: House 0-4 with REP. RICE voting by proxy and Senate 1-2 with SEN. MCGEE voting aye.

Vote: Motion to adopt SB 146 as amended carried as follows: House 4-0 with REP. RICE voting aye by proxy and the Senate 3-0.

ADJOURNMENT

Adjournment: 10:55 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(frs79sb0146aad0.PDF)

FREE CONFERENCE COMMITTEE

on Senate Bill 146
Report No. 1, April 13, 2005

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 146** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Sen. Mike Wheat Chair

Sen. Dan McGee

Sen. Jon Ellingson

For the House:

Rep. Diane Rice

Rep. Michael Lange

Rep. John Parker

Rep. Gail Gutsche

Amendment Coordinator

Secretary of the Senate

And, recommend that **Senate Bill 146** (reference copy -- salmon) be amended as follows:

1. Page 10, line 27.
Following: "DEFENDER."
Insert: "The office of appellate defender must be located in Helena, Montana."

2. Page 28, line 4.
Strike: "$310,195"

ADOPT **Amendment # SB 146-1**

REJECT

Insert: "$172,600"

3. Page 86, line 30.
Following: "~~100%~~"
Strike: "25%"
Insert: "50%"

- END -

accounts subject to the abatement in the same ratio as the property tax was abated."

7. Page 9, line 15.
Following: "effect."
Insert: "The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated."

And, as amended, be concurred in. Report adopted.

HB 756, be concurred in. Report adopted.
HB 758, be concurred in. Report adopted.
HB 776, be concurred in. Report adopted.
HB 802, be concurred in. Report adopted.

REPORTS OF SELECT COMMITTEES

FREE CONFERENCE COMMITTEE
on Senate Bill 146

Report No. 0, April 13, 2005

Mr. President and Mr. Speaker:
We, your Free Conference Committee met and considered **Senate Bill 146** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **Senate Bill 146** (reference copy -- salmon) be amended as follows:

1. Page 10, line 27.
Following: "DEFENDER."
Insert: "The office of appellate defender must be located in Helena, Montana."

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Strike: "$310,195"
Insert: "$172,600"

3. Page 86, line 30.
Following: "~~100%~~"
Strike: "25%"
Insert: "50%"

For the Senate:

Wheat, Chairman
Ellingson
McGee

For the House:

Rice, Chairman
Gutsche
Lange
Parker

CONFERENCE COMMITTEE
on House Amendments to Senate Bill 443

2005 Montana Legislature

About Bill -- Links

46-8-211, 46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES.

AN ACT ESTABLISHING THE MONTANA PUBLIC DEFENDER ACT; PROVIDING PURPOSES AND DEFINITIONS; ESTABLISHING A STATEWIDE PUBLIC DEFENDER SYSTEM TO DELIVER ASSIGNED COUNSEL SERVICES IN STATE, COUNTY, MUNICIPAL, AND CITY COURTS; SPECIFYING THE SCOPE OF PUBLIC DEFENDER SERVICES IN CRIMINAL AND CIVIL PROCEEDINGS TO BE DELIVERED BY THE SYSTEM; REPLACING THE APPELLATE DEFENDER COMMISSION WITH A PUBLIC DEFENDER COMMISSION; ESTABLISHING AN OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING AN OFFICE OF APPELLATE DEFENDER AND PROVIDING FOR A CHIEF APPELLATE DEFENDER; SPECIFYING DUTIES AND RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR REGIONAL OFFICES; PROVIDING FOR A CONTRACTED SERVICES PROGRAM; PROVIDING CERTAIN EXEMPTIONS FROM THE MONTANA PROCUREMENT ACT; PROVIDING FOR DETERMINATIONS OF ELIGIBILITY AND INDIGENCE; REALLOCATING PAYMENT RESPONSIBILITIES FOR CERTAIN COSTS PAYABLE BY THE OFFICE OF COURT ADMINISTRATOR AND THE NEW OFFICE OF STATE PUBLIC DEFENDER; ESTABLISHING A SPECIAL REVENUE ACCOUNT; CHANGING THE LOCAL GOVERNMENT ENTITLEMENT SHARE PAYMENT LAW TO COMPENSATE THE STATE FOR LOCAL GOVERNMENT'S SHARE OF THE COSTS OF THE STATEWIDE PUBLIC DEFENDER SYSTEM; CLARIFYING PROVISIONS RELATED TO WITNESS FEES, TRANSCRIPT FEES, AND PSYCHIATRIC EVALUATION AND EXAMINATION COSTS; PROVIDING THAT A PUBLIC DEFENDER BE ASSIGNED AT THE BEGINNING OF ANY CHILD ABUSE AND NEGLECT PROCEEDING; PROVIDING FOR THE TRANSFER OF EMPLOYEES IN COUNTY AND CITY PUBLIC DEFENDER OFFICES TO STATE EMPLOYMENT; PROVIDING FOR AN IMPLEMENTATION AND TRANSITION PERIOD; REQUIRING A LEGISLATIVE AUDIT SO THAT FUNDING RESPONSIBILITIES FOR CERTAIN COUNTIES CAN BE CALCULATED BASED ON ACTUAL COSTS; AMENDING SECTIONS 2-18-103, 3-5-511, 3-5-604, 3-5-901, 7-6-2426, 15-1-121, 18-4-132, 26-2-501, 26-2-506, 26-2-508, 26-2-510, 40-5-236, 40-6-119, 41-3-205, 41-3-422, 41-3-423, 41-3-432, 41-3-607, 41-3-1010, 41-3-1012, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-8-113, 46-8-114, 46-8-115, 46-12-210, 46-14-202, 46-14-221, 46-15-115, 46-15-116, 46-17-203, 46-18-101, 46-18-201, 46-21-201, 50-20-212, 53-9-104, 53-20-125, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 53-30-110, 61-8-731, 72-5-225, 72-5-234, 72-5-315, 72-5-322, AND 72-5-408, MCA; REPEALING SECTIONS 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211,

46-8-212, AND 46-8-213, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 4 and 6 through 14] may be cited as the "Montana Public Defender Act".

Section 2. Definitions. As used in [sections 1 through 4 and 6 through 14], the following definitions apply:

(1) "Commission" means the public defender commission established in [section 5].

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Indigent" means that a person has been determined under the provisions of [section 14] to be indigent and financially unable to retain private counsel.

(4) "Office" means the office of state public defender established in [section 7].

(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of [sections 1 through 4 and 6 through 14].

(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to [sections 1 through 4 and 6 through 14].

Section 3. Purpose. The purposes of [sections 1 through 4 and 6 through 14] are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests; and

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner.

Section 4. Statewide system -- structure and scope of services -- assignment of counsel at public

expense. (1) There is a statewide public defender system, which must deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.

(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, as provided in [section 11], establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in [section 3].

(3) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the office makes appropriate assignments in a timely manner.

(4) Beginning July 1, 2006, a court may order the office to assign counsel under [sections 1 through 4 and 6 through 14] in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to [section 14], as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in [section 15];

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in [section 15];

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental notification requirements under the Parental Notice of Abortion Act, as provided in 50-20-212;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of [section 12] to provide public defender services under [sections 1 through 4 and 6 through 14] may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

Section 5. Public defender commission. (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of [sections 1 through 4 and 6 through 14] or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(a) the commission and chief public defender shall hire their own staff, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and

(b) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(b) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in [section 7], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members.

Section 6. Commission -- duties -- report -- rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to [sections 1 through 4 and 6 through 14], the commission shall:

(1) establish the qualifications, duties, and compensation of the chief public defender, as provided in [section 7], appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender and the administrative director;

(4) review and approve any proposal to create permanent staff positions;

(5) establish policies and procedures for identifying cases in which public defenders may have a conflict of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of [sections 1 through 4 and 6 through 14]; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission or the chief public defender;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender, identified by region, court, and case type;

(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(k) detailed expenditure data by court and case type.

Section 7. Office of state public defender -- personnel -- compensation -- expenses. (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan, as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office and to implement the provisions of [sections 1 through 4 and 6 through 14], including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan, as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief appellate defender;

(iii) a chief contract manager to oversee and enforce the contracting program;

(iv) a training coordinator, appointed as provided in [section 10];

(v) deputy public defenders, as provided in [section 11]; and

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) Beginning July 1, 2006, the following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in [section 13].

(8) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section.

Section 8. Chief public defender -- duties. In addition to the duties provided in [section 7], the chief public defender shall:

(1) act as secretary to the commission and provide administrative staff support to the commission;

(2) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to [sections 1 through 4 and 6 through 14];

(3) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services;

(4) establish processes and procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(5) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(6) establish administrative management procedures for regional offices;

(7) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

(8) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(9) establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

(10) establish procedures to handle complaints about public defender performance and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(11) maintain a minimum client caseload, as determined by the commission;

(12) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system; and

(13) perform all other duties assigned by the commission pursuant to [sections 1 through 4 and 6 through 14].

Section 9. Office of appellate defender -- chief appellate defender. (1) There is within the office an office of appellate defender. The office of appellate defender must be located in Helena, Montana.

(2) Beginning July 1, 2006, the chief public defender shall hire and supervise a chief appellate defender to manage and supervise the office of appellate defender.

(3) The chief appellate defender shall:

(a) manage and supervise all public defender services provided by the office of appellate defender;

(b) ensure that when a court orders the office to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of [section 8(7)] and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of appellate defender personnel as authorized by the appellate defender;

(e) contract for services as provided in [section 12] and as authorized by the chief public defender according

to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the appellate defender office and submit records and reports to the chief public defender as requested;

(g) implement standards and procedures established by the commission and the chief public defender for the office of appellate defender;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties assigned to the chief appellate defender by the chief public defender.

Section 10. Training program -- coordinator. (1) There is within the office a position of training coordinator for public defenders.

(2) The chief public defender shall appoint the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender;

(e) apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and

(f) perform other duties assigned by the chief public defender.

Section 11. Regional offices -- deputy public defenders -- office space. (1) Beginning July 1, 2006, the chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to [section 4(2)].

(2) Each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders the office to assign counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of [section 8(7)];

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) contract for services as provided in [section 12] and authorized by the chief public defender according to the strategic plan approved by the commission;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the commission and chief public defender for the region;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office and may not be considered a county or city obligation.

Section 12. Contracted services -- rules. (1) The commission shall establish standards for a statewide contracted services program that ensures that contracting for public defender services is done fairly and consistently statewide and within each public defender region.

(2) Beginning July 1, 2006, the state office and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. All contracting pursuant to this section is exempt from the Montana Procurement Act, as provided in 18-4-132.

(3) Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(4) Contracting for public defender services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meet the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(5) The chief public defender and deputy public defenders shall provide for contract oversight and enforcement to ensure compliance with established standards.

(6) The commission shall adopt rules to establish reasonable compensation for attorneys contracted to provide public defender services and for others contracted to provide nonattorney services.

Section 13. Public defender account. (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Beginning July 1, 2006, money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant the Montana Youth Court Act; and

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104.

Section 14. Eligibility -- determination of indigence -- rules. (1) (a) Beginning July 1, 2006, when a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court.

(2) (a) An applicant who is eligible for a public defender only because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out

an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-171, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The commission shall establish procedures and adopt rules to implement this section. Commission procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit individual public defenders from performing eligibility screening pursuant to this section.

Section 15. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child, youth, or guardian ad litem involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) Beginning July 1, 2006, the court's action pursuant to subsection (2) must be to order the office of state

public defender, provided for in [section 7], to immediately assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], pending a determination of eligibility pursuant to [section 14].

Section 16. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic

development provided for in 2-15-218;

(21) chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the employees in the positions listed in [section 7(3)(a)], who are appointed by the chief public defender."

Section 17. Section 3-5-511, MCA, is amended to read:

"**3-5-511. ~~Procedure in reference to witnesses~~ Witnesses' warrants -- state reimbursement.** (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in [section 2], and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as ~~provided in 3-5-901 and 3-5-902~~ follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in [section 7]."

Section 18. Section 3-5-604, MCA, is amended to read:

"**3-5-604. Court reporters -- transcript of proceedings -- costs.** (1) Each court reporter shall furnish, upon request, with all reasonable diligence, to a party or a party's attorney in a case in which the court reporter has attended the trial or hearing a transcript from stenographic notes of the testimony and proceedings of the trial or hearing or a part of a trial or hearing upon payment by the person requiring the transcript of $2 a page for the original transcript, 50 cents a page for the first copy, and 25 cents a page for each additional copy, except as otherwise provided in this section.

(2) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (1) must be paid to the clerk of district court who shall forward the amount to the department of revenue for deposit in the state general fund.

(3) (a) If the judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee

must be paid by the ~~state~~ office of court administrator as provided in 3-5-901.

(b) If the county attorney or the attorney general requires a transcript in a criminal case, the reporter shall furnish the transcript and only the reporter's actual cost of preparation may be paid by the county or the office of the attorney general.

~~(4)~~(c) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(d) In civil cases, all transcripts required by the county must be furnished~~,~~ and only the reporter's actual costs of preparation may be paid by the county.

~~(5)~~(4) (a) If ~~it appears to the judge that a defendant in a criminal case or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6, is unable to pay for a transcript~~ a public defender, as defined in [section 2], requests a transcript, ~~it~~ the transcript must be furnished to the ~~party~~ public defender and paid for by the state office of public defender, as provided in ~~3-5-901~~ [section 7].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901."

Section 19. Section 3-5-901, MCA, is amended to read:

"**3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court program under the judicial branch. Under this program, the ~~state~~ office of court administrator shall fund ~~all~~ all district court costs, except as provided in subsection ~~(4)~~ (3). These costs include ~~but are not limited to~~ but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases~~,~~:

(i) fees for transcripts of proceedings, as provided in 3-5-604~~, expenses for indigent defense that are paid under contract or at an hourly rate, and expenses for psychiatric examinations~~;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric evaluation under 46-14-202, the cost of the examination and other associated expenses,

as provided in 46-14-202(4)(a)(i) and (4)(a)(iii); and

(v) for a psychiatric evaluation under 46-14-221, the cost of the examination and other associated expenses, as provided in 46-14-221(5);

(c) except as provided in [section 7(5)], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in [section 7(5)], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in [section 7(5)], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

~~(f) in involuntary commitment cases pursuant to 53-21-121, reasonable compensation for services and related expenses for counsel appointed by the court;~~

(f) except as provided in [section 7(5)], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in [section 7(5)], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors~~, but excluding the cost of providing district court office, courtroom, and other space as provided in 3-1-125~~; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5~~, and the costs of providing youth court office, courtroom, and other space as provided in 3-1-125~~.

~~(2) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall fund and directly pay the expenses of the appellate defender program. These costs must be allocated to and paid by the appellate defender program.~~

~~(3) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1)~~

(2) If a cost is not paid directly by the office of court administrator, the ~~state~~ county shall pay the cost and the office of court administrator shall reimburse ~~counties,~~ the county within 30 days of receipt of a claim~~, for the following:~~

~~(a) in district court criminal cases:~~

~~(i) expenses for indigent defense that are not paid under subsection (1)(b);~~

~~(ii) juror fees and necessary expenses; and~~

~~(iii) witness fees and necessary expenses as provided in 46-15-116;~~

~~(b) in proceedings under subsection (1)(c):~~

~~(i) expenses for appointed counsel for the youth; and~~

~~(ii) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and~~

~~(c) costs of juror and witness fees and witness expenses before a grand jury~~.

~~(4)~~(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

~~(a) one-half of the salaries of county attorneys;~~

~~(b) salaries of deputy county attorneys;~~

~~(c) salaries of employees and expenses of the offices of county attorneys;~~

~~(d)~~(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

~~(e)~~(b) costs of providing and maintaining district court office space; or

~~(f)~~(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 20. Section 7-6-2426, MCA, is amended to read:

"7-6-2426. Enumeration of county charges. (1) The following are county charges:

(a) charges incurred against the county by virtue of any provision of this title;

(b) one-half of the salary of the county attorney and all expenses necessarily incurred by the county attorney in criminal cases arising within the county, except as provided in subsection (2);

(c) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(d) the board of prisoners confined in jail;

(e) the accounts of the coroner of the county for services that are provided by law;

(f) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(g) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(h) the contingent expenses necessarily incurred for the use and benefit of the county;

(i) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

(2) The costs of subsection (1)(b) arising from the criminal prosecution of escape or of an offense committed in the state prison must be paid ~~by the department of corrections~~ as provided in 53-30-110."

Section 21. Section 15-1-121, MCA, is amended to read:

"15-1-121. Entitlement share payment -- appropriation. (1) The amount calculated pursuant to this subsection, as adjusted pursuant to subsection (3)(a)(i), is each local government's base entitlement share. The department shall estimate the total amount of revenue that each local government received from the following sources for the fiscal year ending June 30, 2001:

(a) personal property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999;

(b) vehicle and boat taxes and fees pursuant to:

(i) Title 23, chapter 2, part 5;

(ii) Title 23, chapter 2, part 6;

(iii) Title 23, chapter 2, part 8;

(iv) 61-3-317;

(v) 61-3-321;

(vi) Title 61, chapter 3, part 5, except for 61-3-509(3), as that subsection read prior to the amendment of 61-

3-509 in 2001;

(vii) Title 61, chapter 3, part 7;

(viii) 5% of the fees collected under 61-10-122;

(ix) 61-10-130;

(x) 61-10-148; and

(xi) 67-3-205;

(c) gaming revenue pursuant to Title 23, chapter 5, part 6, except for the permit fee in 23-5-612(2)(a);

(d) district court fees pursuant to:

(i) 25-1-201, except those fees in 25-1-201(1)(d), (1)(g), and (1)(j);

(ii) 25-1-202;

(iii) 25-1-1103;

(iv) 25-9-506;

(v) 25-9-804; and

(vi) 27-9-103;

(e) certificate of title fees for manufactured homes pursuant to 15-1-116;

(f) financial institution taxes pursuant to Title 15, chapter 31, part 7;

(g) coal severance taxes allocated for county land planning pursuant to 15-35-108;

(h) all beer, liquor, and wine taxes pursuant to:

(i) 16-1-404;

(ii) 16-1-406; and

(iii) 16-1-411;

(i) late filing fees pursuant to 61-3-220;

(j) title and registration fees pursuant to 61-3-203;

(k) veterans' cemetery license plate fees pursuant to 61-3-459;

(l) county personalized license plate fees pursuant to 61-3-406;

(m) special mobile equipment fees pursuant to 61-3-431;

(n) single movement permit fees pursuant to 61-4-310;

(o) state aeronautics fees pursuant to 67-3-101; and

(p) department of natural resources and conservation payments in lieu of taxes pursuant to Title 77, chapter 1, part 5.

(2) (a) From the amounts estimated in subsection (1) for each county government, the department shall deduct fiscal year 2001 county government expenditures for district courts, less reimbursements for district court

expenses, and fiscal year 2001 county government expenditures for public welfare programs to be assumed by the state in fiscal year 2002.

(b) The amount estimated pursuant to subsections (1) and (2)(a) is each local government's base year component. The sum of all local governments' base year components is the base year entitlement share pool. For the purpose of calculating the sum of all local governments' base year components, the base year component for a local government may not be less than zero.

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year ~~2004~~ 2007 to determine the fiscal year ~~2004~~ 2007 entitlement share ~~pool~~ payments, the department shall ~~add to~~ subtract from the fiscal year ~~2003~~ 2006 entitlement share ~~pool~~ payments the ~~fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)~~ following amounts:

Beaverhead   0;   0;   0;   0; $6,972

Big Horn 0;   0;   0;   0;   0; $52,551

Blaine   0;   0;   0;   0;   0; $13,625

Broadwater 0;   0;   0;   0;   0; $2,564

Carbon   0;   0;   0;   0;   0; $11,537

Carter   0;   0;   0;   0;   0; $407

Cascade 0;   0;   0;   0;   0; $157,151

Chouteau 0;   0;   0;   0; &#

(3) (a) ~~Beginning with fiscal year 2002 and in each succeeding fiscal year, the~~ The base year entitlement share pool must be increased annually by a growth rate as provided for in this subsection (3). The amount determined through the application of annual growth rates is the entitlement share pool for each fiscal year. ~~For fiscal year 2002, the growth rate is 3%. For fiscal year 2003, the growth rate is 3% for incorporated cities and towns, 1.61% for counties, and 2.3% for consolidated local governments. Beginning with calendar year 2002, by~~ By October 1 of each even-numbered year, the department shall calculate the growth rate of the entitlement share pool for each year of the next biennium in the following manner:

(i) Before applying the growth rate for fiscal year ~~2004~~ 2007 to determine the fiscal year ~~2004~~ 2007 entitlement share ~~pool~~ payments, the department shall ~~add to~~ subtract from the fiscal year ~~2003~~ 2006 entitlement share ~~pool~~ payments the ~~fiscal year 2003 amount of revenue actually distributed to the county from the 25-cent marriage license fee in 50-15-301 and the probation and parole fee in 46-23-1031(2)(b)~~ following amounts:

Beaverhead	$6,972
Big Horn	$52,551
Blaine	$13,625
Broadwater	$2,564
Carbon	$11,537
Carter	$407
Cascade	$157,151
Chouteau	$3,536
Custer	$7,011
Daniels	$143
Dawson	$3,893
Fallon	$1,803
Fergus	$9,324
Flathead	$33,655
Gallatin	$222,029
Garfield	$91
Glacier	$3,035
Golden Valley	$2,282

	SB0146
Granite	$4,554
Hill	$31,740
Jefferson	$5,700
Judith Basin	$1,487
Lake	$38,314
Lewis and Clark	$247,886
Liberty	$152
Lincoln	$3,759
Madison	$8,805
McCone	$1,651
Meagher	$2,722
Mineral	$2,361
Missoula	$172,600
Musselshell	$23,275
Park	$6,582
Petroleum	$36
Phillips	$653
Pondera	$10,270
Powder River	$848
Powell	$5,146
Prairie	$717
Ravalli	$93,090
Richland	$3,833
Roosevelt	$9,526
Rosebud	$19,971
Sanders	$30,712
Sheridan	$271
Stillwater	$12,117
Sweet Grass	$2,463

Teton	$5,560
Toole	$7,113
Treasure	$54
Valley	$6,899
Wheatland	$918
Wibaux	$72
Yellowstone	$266,644
Anaconda-Deer Lodge	$20,707
Butte-Silver Bow	$53,057
Alberton	$675
Bainville	$258
Baker	$2,828
Bearcreek	$143
Belgrade	$11,704
Belt	$1,056
Big Sandy	$1,130
Big Timber	$2,910
Billings	$163,499
Boulder	$2,340
Bozeman	$52,805
Bridger	$1,303
Broadus	$766
Broadview	$258
Brockton	$414
Browning	$1,830
Cascade	$1,374
Chester	$1,430
Chinook	$2,275
Choteau	$3,050

Circle	$1,018
Clyde Park	$572
Colstrip	$4,090
Columbia Falls	6,805
Columbus	$3,245
Conrad	$4,562
Culbertson	$1,216
Cut Bank	$5,316
Darby	$1,348
Deer Lodge	$5,708
Denton	$503
Dillon	$6,928
Dodson	$194
Drummond	$561
Dutton	$661
East Helena	$2,888
Ekalaka	$689
Ennis	$1,518
Eureka	$1,733
Fairfield	$1,120
Fairview	$1,152
Flaxville	$143
Forsyth	$3,286
Fort Benton	$2,579
Fort Peck	$393
Froid	$328
Fromberg	$855
Geraldine	$457
Glasgow	$5,361

Glendive	$8,099
Grass Range	$254
Great Falls	$96,422
Hamilton	$7,148
Hardin	$5,920
Harlem	$1,422
Harlowton	$1,678
Havre	$16,223
Helena	$45,877
Hingham	$263
Hobson	$397
Hot Springs	$912
Hysham	$482
Ismay	$43
Joliet	$1,006
Jordan	$606
Judith Gap	$263
Kalispell	$28,144
Kevin	$304
Laurel	$10,804
Lavina	$361
Lewistown	$10,170
Libby	$4,475
Lima	$397
Livingston	$12,145
Lodge Grass	$889
Malta	$3,389
Manhattan	$2,485
Medicine Lake	$410

Melstone	$234
Miles City	$14,152
Missoula	$104,264
Moore	$319
Nashua	$536
Neihart	$149
Opheim	$180
Outlook	$125
Philipsburg	$1,612
Pinesdale	$1,413
Plains	$2,007
Plentywood	$3,185
Plevna	$225
Polson	$7,722
Poplar	$1,544
Red Lodge	$3,903
Rexford	$263
Richey	$309
Ronan	$3,262
Roundup	$3,280
Ryegate	$465
Saco	$354
Scobey	$1,798
Shelby	$5,677
Sheridan	$1,150
Sidney	$7,747
Stanford	$737
Stevensville	$3,063
St. Ignatius	$1,367

Sunburst	$709
Superior	$1,521
Terry	$1,011
Thompson Falls	$2,272
Three Forks	$3,130
Townsend	$3,286
Troy	$1,654
Twin Bridges	$695
Valier	$817
Virginia City	$223
Walkerville	$1,183
West Yellowstone	$2,083
Westby	$263
White Sulphur	$1,734
Whitefish	$9,932
Whitehall	$1,889
Wibaux	$893
Winifred	$259
Winnett	$314
Wolf Point	$4,497.

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

0; &# 160; $223

Walkerville 60; & #160; 0; &# 160; 0; &# 160; 0; &# 160; $1,183< /span>

West Yellowstone 0; &# 160; 0; &# 160; 0; &# 160; $2,0 83

Westby & #160; 0; &# 160; 0; &# 160; 0; &# 160; 0; $263

White Sulphur 0; &# 160; 0; &# 160; 0; &# 160; 0; &# 160; $1,734

Whitefish ; 60; & #160; 0; &# 160; 0; &# 160; 0; &# 160;$9,932

Whitehall ; 60; & #160; 0; &# 160; 0; &# 160; 0; &# 160;$1,889

Wibaux 0; &# 160; 0; &# 160; 0; &# 160; 0; &# 160; $893

Winifred 0; &# 160; 0; &# 160; 0; &# 160; 0; &# 160; $259

Winnett 0; &# 160; 0; &# 160; 0; &# 160; 0; &# 160; $314

Wolf Point 0; &# 160; 0; &# 160; 0; &# 160; 0; $4,497.

(ii) The department shall calculate the average annual growth rate of the Montana gross state product, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(ii)(A).

(iii) The department shall calculate the average annual growth rate of Montana personal income, as published by the bureau of economic analysis of the United States department of commerce, for the following periods:

(A) the last 4 calendar years for which the information has been published; and

(B) the 4 calendar years beginning with the year before the first year in the period referred to in subsection (3)(a)(iii)(A).

(b) (i) ~~For fiscal year 2004 and subsequent fiscal years, the~~ The entitlement share pool growth rate for the first year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(B) and (3)(a)(iii)(B):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(ii) The entitlement share pool growth rate for the second year of the biennium must be the following percentage of the average of the growth rates calculated in subsections (3)(a)(ii)(A) and (3)(a)(iii)(A):

(A) for counties, 54%;

(B) for consolidated local governments, 62%; and

(C) for incorporated cities and towns, 70%.

(4) As used in this section, "local government" means a county, a consolidated local government, an incorporated city, and an incorporated town. A local government does not include a tax increment financing district provided for in subsection (6). For purposes of calculating the base year component for a county or consolidated local government, the department shall include the revenue listed in subsection (1) for all special districts within the county or consolidated local government. The county or consolidated local government is responsible for making an allocation from the county's or consolidated local government's share of the entitlement share pool to each special district within the county or consolidated local government in a manner that reasonably reflects each special district's loss of revenue sources listed in subsection (1).

(5) (a) The entitlement share pools calculated in this section and the block grants provided for in subsection (6) are statutorily appropriated, as provided in 17-7-502, from the general fund to the department for distribution to local governments. Each local government is entitled to a pro rata share of each year's entitlement share pool based on the local government's base component in relation to the base year entitlement share pool. The distributions must be made on a quarterly basis ~~beginning September 15, 2001~~.

(b) (i) ~~For fiscal year 2002, the growth amount is the difference between the fiscal year 2002 entitlement share pool and the base year entitlement share pool. For fiscal year 2002, a county may have a negative base year component. For fiscal year 2003 and each succeeding fiscal year, the~~ The growth amount is the difference between the entitlement share pool in the current fiscal year and the entitlement share pool in the previous fiscal year. For the purposes of subsection (5)(b)(ii)(A), a county with a negative base year component has a base year component of zero. The growth factor in the entitlement share must be calculated separately for:

(A) counties;

(B) consolidated local governments; and

(C) incorporated cities and towns.

(ii) In each fiscal year, the growth amount for counties must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each county's percentage of the base year entitlement share pool for all counties; and

(B) 50% of the growth amount must be allocated based upon the percentage that each county's population bears to the state population not residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iii) In each fiscal year, the growth amount for consolidated local governments must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each consolidated local government's percentage of the base year entitlement share pool for all consolidated local governments; and

(B) 50% of the growth amount must be allocated based upon the percentage that each consolidated local government's population bears to the state's total population residing within consolidated local governments as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(iv) In each fiscal year, the growth amount for incorporated cities and towns must be allocated as follows:

(A) 50% of the growth amount must be allocated based upon each incorporated city's or town's percentage of the base year entitlement share pool for all incorporated cities and towns; and

(B) 50% of the growth amount must be allocated based upon the percentage that each city's or town's population bears to the state's total population residing within incorporated cities and towns as determined by the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing

districts is as follows:

Cascade Great Falls - downtown &# 160; $468,966

Deer Lodge TIF District 1 &# 160; 3,148

Deer Lodge TIF District 2 &# 160; 8,126

Flathead Kalispell - District 1 &# 160; 758,359

Flathead Kalispell - District 2 &# 160; 5,153

Flathead Kalispell - District 3 &# 160; 41,368

Flathead Whitefish District &# 160; 16 4,660

Gallatin Bozeman - downtown &# 160; 34,620

Lewis and Clark Helena - #2 &# 160; 731,614

Missoula Missoula - 1-1B & 1-1C 1,100,507

Missoula Missoula - 4-1C 33,343

Silver Bow Butte - uptown &# 160; 283,801

Yellowstone Billings &# 160; & #160; 436,815

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

~~Missoula County Airport Industrial $4,812~~

~~Silver Bow Ramsay Industrial 597,594;~~

~~(ii) for fiscal years 2004 and 2005:~~

~~Missoula County Airport Industrial $2,406~~

~~Silver Bow Ramsay Industrial 298,797; and~~

~~(iii) $0 for all succeeding fiscal years.~~

~~(d) The entitlement share for industrial tax increment financing districts referred to in subsection (6)(c) may not be used to pay debt service on tax increment bonds to the extent that the bonds are secured by a guaranty, a letter of credit, or a similar arrangement provided by or on behalf of an owner of property within the tax increment financing industrial district.~~

~~(e) One-half of the payments provided for in subsection (6)(c) must be made by July 30, and the other half must be made in December of each year.~~

(7) The estimated base year entitlement share pool and any subsequent entitlement share pool for local governments do not include revenue received from countywide transportation block grants or from countywide retirement block grants.

~~(8) The estimates for the base year entitlement share pool in subsection (1) must be calculated as if the fees~~

(v) In each fiscal year, the amount of the entitlement share pool not represented by the growth amount is distributed to each local government in the same manner as the entitlement share pool was distributed in the prior fiscal year.

~~(vi) For fiscal year 2002, an amount equal to the district court costs identified in subsection (2) must be added to each county government's distribution from the entitlement share pool.~~

~~(vii) For fiscal year 2002, an amount equal to the district court fees identified in subsection (1)(d) must be subtracted from each county government's distribution from the entitlement share pool.~~

(6) (a) If a tax increment financing district was not in existence during the fiscal year ending June 30, 2000, then the tax increment financing district is not entitled to any block grant. If a tax increment financing district referred to in subsection (6)(b) terminates, then the block grant provided for in subsection (6)(b) terminates.

(b) One-half of the payments provided for in this subsection (6)(b) must be made by November 30 and the other half by May 31 of each year. Subject to subsection (6)(a), the entitlement share for tax increment financing districts is as follows:

Cascade	Great Falls - downtown	$468,966
Deer Lodge	TIF District 1	3,148
Deer Lodge	TIF District 2	3,126
Flathead	Kalispell - District 1	758,359
Flathead	Kalispell - District 2	5,153
Flathead	Kalispell - District 3	41,368
Flathead	Whitefish District	164,660
Gallatin	Bozeman - downtown	34,620
Lewis and Clark	Helena - #2	731,614
Missoula	Missoula - 1-1B & 1-1C	1,100,507
Missoula	Missoula - 4-1C	33,343
Silver Bow	Butte - uptown	283,801
Yellowstone	Billings	436,815

~~(c) The entitlement share for industrial tax increment financing districts is as follows:~~

~~(i) for fiscal years 2002 and 2003:~~

~~in Chapter 515, Laws of 1999, were in effect for all of fiscal year 2001.~~

~~(9)~~(8) (a) If revenue that is included in the sources listed in subsections (1)(b) through (1)(p) is significantly reduced, except through legislative action, the department shall deduct the amount of revenue loss from the entitlement share pool beginning in the succeeding fiscal year and the department shall work with local governments to propose legislation to adjust the entitlement share pool to reflect an allocation of the loss of revenue.

(b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a significant reduction is a loss that causes the amount of revenue received in the current year to be less than 95% of the amount of revenue received in the base year.

~~(10)~~(9) A three-fifths vote of each house is required to reduce the amount of the entitlement share calculated pursuant to subsections (1) through (3).

~~(11)~~(10) When there has been an underpayment of a local government's share of the entitlement share pool, the department shall distribute the difference between the underpayment and the correct amount of the entitlement share. When there has been an overpayment of a local government's entitlement share, the local government shall remit the overpaid amount to the department.

~~(12)~~(11) A local government may appeal the department's estimation of the base year component, the entitlement share pool growth rate, or a local government's allocation of the entitlement share pool, according to the uniform dispute review procedure in 15-1-211.

~~(13)~~(12) A payment required pursuant to this section may not be offset by a debt owed to a state agency by a local government in accordance with Title 17, chapter 4, part 1."

Section 22. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by a statute that provides that this chapter does not apply to the contract. This chapter applies to a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment

purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction;

(h) a claims adjuster; or

(i) a court reporter appointed as an independent contractor under 3-5-601.

(7) (a) This chapter does not apply to electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(8) This chapter does not apply to contracting under [section 12] of the Montana Public Defender Act."

Section 23. Section 26-2-501, MCA, is amended to read:

"26-2-501. Witnesses in courts of record and before certain court officers. (1) ~~Witness~~ Except as provided in 26-2-505 and subsection (2) of this section, witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, $10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, ~~no~~ an officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana ~~shall~~ may not receive any per diem when testifying in a criminal proceeding, and ~~no~~ a witness ~~shall~~ may not receive fees in ~~any~~ more than one criminal case on the same day."

Section 24. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing ~~in civil actions~~ -- exceptions. ~~The~~ (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused ~~him~~ the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in [section 2], the fees and expenses must be paid by the office of state public defender as provided in [section 7(5)].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in [section 2], but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 25. Section 26-2-508, MCA, is amended to read:

"26-2-508. Witnesses ~~on behalf of~~ for state, ~~or~~ county, or public defender -- advance payment not required. The attorney general, ~~or~~ any county attorney, or any public defender, as defined in [section 2], is authorized to cause subpoenas to be issued and compel the attendance of witnesses ~~on behalf of the state or county~~ without paying or tendering fees in advance to either officers or witnesses~~;~~. ~~and any~~ A witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid."

Section 26. Section 26-2-510, MCA, is amended to read:

"26-2-510. Application of sections exempting from advance payment. The provisions of 26-2-508 and 26-2-509 ~~shall~~ extend to all actions and proceedings brought in the name of the attorney general, ~~or~~ any other person or persons for the benefit of the state or county, or any other person or persons for the benefit of a public defender, as defined in [section 2]."

Section 27. Section 40-5-236, MCA, is amended to read:

"40-5-236. Referral of paternity issue to district court -- record -- parties -- exclusion of other matters

-- fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results specifically requesting referral of the paternity issue to the district court. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of parental responsibility and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys ~~appointed~~ assigned under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

Section 28. Section 40-6-119, MCA, is amended to read:

"40-6-119. Right to counsel -- ~~payment of counsel fees and costs -- free~~ transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall ~~appoint~~ order the office of state public defender, pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to assign counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees ~~of counsel,~~ for experts~~,~~ and the child's guardian ad litem and other

costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal. Transcript fees must be paid as provided in 3-5-604(4)."

Section 29. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (6) and (7), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's ~~court-appointed~~ assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(7) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (6) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(8) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(9) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 30. Section 41-3-422, MCA, is amended to read:

"41-3-422. Abuse and neglect petitions -- burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

(i) immediate protection and emergency protective services, as provided in 41-3-427;

(ii) temporary investigative authority, as provided in 41-3-433;

(iii) temporary legal custody, as provided in 41-3-442;

(iv) long-term custody, as provided in 41-3-445;

(v) termination of the parent-child legal relationship, as provided in 41-3-607;

(vi) appointment of a guardian pursuant to 41-3-444;

(vii) a determination that preservation or reunification services need not be provided; or

(viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

(i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;

(ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;

(iii) a preponderance of the evidence for an order of long-term custody; or

(iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,

guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served by certified mail. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall ~~appoint~~ immediately provide for the appointment or assignment of an attorney as provided for in [section 15] to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

(a) state the nature of the alleged abuse or neglect and of the relief requested;

(b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

~~(11) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent~~

~~party. If an indigent parent is not already represented by counsel, counsel must be appointed for an indigent parent at the time that a request is made for a determination that preservation or reunification services need not be provided.~~

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in [section 15].

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to [section 15], to ~~request the~~ appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws."

Section 31. Section 41-3-423, MCA, is amended to read:

"41-3-423. Reasonable efforts required to prevent removal of child or to return -- exemption -- findings -- permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. ~~If~~ If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel ~~must be appointed by the court at the time that a request is made for a determination under this subsection~~ to represent the indigent parent in accordance with the provisions of [section 15]. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302."

Section 32. Section 41-3-432, MCA, is amended to read:

"41-3-432. Show cause hearing -- order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the

issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in [section 15]. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to

part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court."

Section 33. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination -- separate hearing -- ~~right to counsel --~~ no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

~~(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.~~

~~(5)~~(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent.

~~(6)~~(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 34. Section 41-3-1010, MCA, is amended to read:

"41-3-1010. Review -- scope -- procedures -- immunity. (1) (a) The board shall review the case of each

child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

(i) the safety of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether caseworkers have diligently provided services;

(iv) whether appropriate services have been available to the child and family on a timely basis; and

(v) the results of intervention.

(b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(2) The review must take place at times set by the board. The time limit must comply with the Adoption and Safe Families Act of 1997.

(3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed ~~attorney or~~ special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for the placement and the appropriateness and safety of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or

appear on behalf of the child pursuant to 41-3-112.

(6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the board.

(b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.

(8) The board may hold joint or separate reviews for groups of siblings.

(9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, childrens' attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112."

Section 35. Section 41-3-1012, MCA, is amended to read:

"41-3-1012. Presence of employees and participants at reviews and deliberations of board. (1) Unless excused from doing so by the board, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board reviews.

(2) The board may require the presence of specific employees of the department or any other agency or other persons at board reviews. If an employee fails to be present at the review, the board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the

guardian ad litem, the court-appointed ~~attorney or~~ special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

(6) As used in this section, the following definitions apply:

(a) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.

~~(a)~~(c) "Presence" includes telephone participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required.

~~(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.~~

~~(c) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.~~"

Section 36. Section 41-5-111, MCA, is amended to read:

"**41-5-111. Court costs and expenses.** ~~The following expenses must be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:~~

(1) ~~reasonable compensation~~ Compensation for services and related expenses for counsel ~~appointed by the court~~ assigned for a party must be paid by the office of state public defender provided for in [section 7].~~;~~

(2) ~~the expenses of~~ Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other ~~like~~ witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for ~~by law~~ in 26-2-506.~~;~~

(3) ~~reasonable~~ Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.~~; and~~

(4) ~~cost of~~ Costs for transcripts and printing briefs ~~on appeal~~ must be paid as provided for in 3-5-604."

Section 37. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in [section 7], to assign counsel ~~must be appointed~~ for the youth ~~if the parents or guardian and the youth are unable to provide counsel~~ pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], unless the right to ~~appointed~~ counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 38. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in [section 7], to assign counsel to represent the minor parent."

Section 39. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 40. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel~~,~~ and must be asked if the aid of counsel is desired.

(2) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, ~~is unable to employ counsel, and is entitled to have counsel assigned,~~ the court shall order the office of state public defender, provided for in [section 7], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of [section 14].

~~(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:~~

~~(a) the offense charged is a felony;~~

~~(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or~~

~~(c) the interests of justice would be served by assignment.~~"

Section 41. Section 46-8-104, MCA, is amended to read:

"46-8-104. ~~Appointment~~ Assignment of counsel after trial. Any court of record may order the office of state public defender, provided for in [section 7], to assign counsel, subject to the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if ~~he~~ the defendant, petitioner, or appellant desires counsel and is unable to employ counsel."

Section 42. Section 46-8-113, MCA, is amended to read:

"46-8-113. Payment ~~for court-appointed counsel~~ by defendant for assigned counsel. (1) ~~The~~ As part of or as a condition under a sentence imposed under the provisions of this title, the court may require a convicted defendant to pay the costs of ~~court-appointed~~ counsel ~~as a part of or a condition under the sentence imposed as provided in Title 46~~ assigned to represent the defendant.

(2) Costs must be limited to ~~reasonable compensation and~~ costs incurred by the ~~court-appointed counsel~~ office of state public defender, provided for in [section 7], for providing the defendant with counsel in the criminal proceeding.

(3) The court may not sentence a defendant to pay the costs ~~of court-appointed~~ for assigned counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment

of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 43. Section 46-8-114, MCA, is amended to read:

"46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of ~~court-appointed~~ assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the ~~clerk of district court. The clerk of district court shall forward the payments to the department of revenue for deposit in the state general fund~~ office of state public defender, provided for in [section 7], and deposited in the account established in [section 13]."

Section 44. Section 46-8-115, MCA, is amended to read:

"46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of ~~court-appointed~~ assigned counsel defaults in payment of the costs or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of ~~court-appointed~~ assigned counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for

the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

Section 45. Section 46-12-210, MCA, is amended to read:

"**46-12-210. Advice to defendant.** (1) Before accepting a plea of guilty or nolo contendere, the court shall determine that the defendant understands the following:

(a) (i) the nature of the charge for which the plea is offered;

(ii) the mandatory minimum penalty provided by law, if any;

(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, ~~one~~ an attorney will be ~~appointed~~ assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the defendant;

(c) that the defendant has the right:

(i) to plead not guilty or to persist in that plea if it has already been made;

(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

(iii) to confront and cross-examine witnesses against the defendant; and

(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 46. Section 46-14-202, MCA, is amended to read:

"46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) ~~The~~ The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

~~(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the state as provided in 3-5-901.~~

(4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the district court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the office of court administrator, as provided in 3-5-901;

(ii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the office of state public defender;

(iii) if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and the examination was jointly requested by the prosecution and defense counsel or the need for the examination was jointly agreed to by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the office of court administrator and the office of state public defender.

(b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred in association with the commitment to a hospital or other suitable facility for the purpose of examination, regardless of whether the examination is done at the Montana state hospital or any other facility:

(i) the expenses of transporting the defendant from the place of detention to the place where the examination

is performed and returning the defendant to detention, including personnel costs of the law enforcement agency by whom the defendant is detained;

(ii) housing expenses of the facility where the examination is performed; and

(iii) medical costs, including medical and dental care, including costs of medication."

Section 47. Section 46-14-221, MCA, is amended to read:

"**46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses.** (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental

disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate ~~institution~~ facility of the department of public health and human services, of keeping the defendant there, and of bringing the defendant back are payable by the ~~state~~ office of court administrator as a district court expense as provided for in 3-5-901."

Section 48. Section 46-15-115, MCA, is amended to read:

"**46-15-115. Subpoena for witness when defendant unable to pay.** (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of ~~the~~ a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in [section 2], a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in [section 2], witness costs must be paid by the office of state public defender as provided for in [section 7]."

Section 49. Section 46-15-116, MCA, is amended to read:

"**46-15-116. Fees, costs, and expenses.** (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness must receive the witness fee prescribed by Title 26, chapter 2, part 5, except as otherwise provided in this section.

(2) The court, on motion by either party, may allow additional fees for expert witnesses.

~~(2)~~(3) The court may determine the reasonable and necessary expenses of subpoenaed witnesses for an indigent defendant not represented by a public defender, as defined in [section 2], and order the clerk of court to pay the expenses.

~~(3)~~(4) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by ~~statutory enactment~~ statute required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

~~(4)~~(5) The witness fees, costs, and expenses must be paid ~~by the state according to procedures required by the supreme court administrator under 3-5-902~~ as provided in 26-2-506."

Section 50. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-

12-201."

Section 51. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correctional and sentencing policy. (1) It is the purpose of this section to establish the correctional and sentencing policy of the state of Montana. Laws for the punishment of crime are drawn to implement the policy established by this section.

(2) The correctional and sentencing policy of the state of Montana is to:

(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense; and

(d) encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community.

(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:

(a) Sentencing and punishment must be certain, timely, consistent, and understandable.

(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.

(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.

(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.

(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.

(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.

(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.

(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of ~~court-appointed~~ assigned counsel, as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment.

(i) Sentencing practices should promote and support practices, policies, and programs that focus on

restorative justice principles."

Section 52. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(a) a fine as provided by law for the offense;

(b) payment of costs~~,~~ as provided in 46-18-232~~,~~ or payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(d) commitment of:

(i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended; or

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(e) with the approval of the facility or program, placement of the offender in a community corrections facility or program as provided in 53-30-321;

(f) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, placement of the offender in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) any combination of subsections (2) through (3)(g).

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403;

(n) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(o) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(n).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict

of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise."

Section 53. Section 46-21-201, MCA, is amended to read:

"**46-21-201. Proceedings on petition.** (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel for a petitioner who qualifies for the ~~appointment~~ assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, [sections 1 through 4 and 6 through 14].

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the

sentencing court shall notify the sentenced person that if the person is indigent, as defined in [section 2], and wishes to file a petition under this chapter, the court will ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of ~~appointed~~ assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) ~~appoint~~ order the office of state public defender to assign counsel to represent the person ~~if~~ pending a determination by the ~~court finds~~ office of state public defender that the person is indigent, as defined in [section 2], and that the person either has accepted the offer of ~~appointment~~ assigned counsel or is unable to competently decide whether to accept the offer of ~~appointed~~ assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the ~~court finds that the~~ petitioner is determined not to be indigent, deny or rescind any order requiring the assignment ~~appointment~~ of counsel.

(c) ~~The court may not appoint counsel~~ The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the ~~appointment~~ assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent ~~at the time that the court's determination is made under subsection (3)(b)~~ but ~~thereafter~~ becomes indigent at any subsequent stage of the proceedings, the court shall ~~appoint~~ order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel ~~appointed~~ assigned pursuant to this subsection (3) must be paid ~~as provided in 46-8-201~~ by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail,

or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 54. Section 50-20-212, MCA, is amended to read:

"50-20-212. Procedure for judicial waiver of notice. (1) The requirements and procedures under this section are available to minors and incompetent persons whether or not they are residents of this state.

(2) (a) The minor or incompetent person may petition the youth court for a waiver of the notice requirement and may participate in the proceedings on the person's own behalf. The petition must include a statement that the petitioner is pregnant and is not emancipated. The court may appoint a guardian ad litem for the petitioner. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the petitioner of the right to ~~court-appointed~~ assigned counsel and shall ~~provide the petitioner with~~ order the office of state public defender, provided for in [section 7], to assign counsel upon request.

(b) If the petition filed under subsection (2)(a) alleges abuse as a basis for waiver of notice, the youth court shall treat the petition as a report under 41-3-202. The provisions of Title 41, chapter 3, part 2, apply to an investigation conducted pursuant to this subsection.

(3) Proceedings under this section are confidential and must ensure the anonymity of the petitioner. All proceedings under this section must be sealed. The petitioner may file the petition using a pseudonym or using the petitioner's initials. All documents related to the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the petitioner. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the notice requirement is waived.

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

(a) there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, a guardian, or a custodian; or

(b) the notification of a parent or guardian is not in the best interests of the petitioner.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and

conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a petitioner if the youth court denies a petition. An order authorizing an abortion without notice is not subject to appeal.

(9) Filing fees may not be required of a pregnant minor who petitions a court for a waiver of parental notification or appeals a denial of a petition."

Section 55. Section 53-9-104, MCA, is amended to read:

"**53-9-104. Powers and duties of office.** (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to ~~pay the costs and attorney fees of court-appointed~~ reimburse the office of state public defender, provided for in [section 7], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney ~~appointed~~ assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 56. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility -- hearing. (1) A person may be committed to a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent.

(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall ~~appoint~~ order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to [section 14].

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) If the court finds that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, it shall order the respondent committed to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, it shall dismiss the petition.

(9) If none of the parties notified of the recommendation request a hearing, the court may issue an order for the commitment of the respondent to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted.

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(11) An order for commitment must be accompanied by findings of fact.

(12) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 57. Section 53-21-112, MCA, is amended to read:

"**53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. ~~Counsel must be appointed for the minor at~~ At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in [section 7], to assign counsel for the minor."

Section 58. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- ~~appointment~~ assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall ~~appoint~~ order the office of state public defender, provided for in [section 7], to immediately assign counsel to represent the person at either the hearing or the trial, or both~~, and the counsel must be compensated pursuant to 3-5-901(1)(f)~~."

Section 59. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) ~~If a judge is available, the~~ The judge shall consider the petition~~, and if~~. If the judge finds no probable cause, ~~it~~ the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in [section 7], to immediately assign counsel ~~must be immediately appointed~~ for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on

behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent ~~and in the confirmation of the appointment of the attorney~~.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. ~~If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.~~ The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in [section 7], to immediately provide assigned counsel. The judge, through the clerk of court, may also order ~~must also direct~~ that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the ~~clerk's~~ order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the ~~appointment~~ assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge. ~~The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.~~"

Section 60. Section 53-24-302, MCA, is amended to read:

"**53-24-302. Involuntary commitment of alcoholics -- rights.** (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. ~~The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county.~~ The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the

period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel ~~appointed by the court or provided by the court~~ pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall ~~require, by appointment if necessary,~~ order the office of state public defender, provided for in [section 7], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ

of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 61. Section 53-30-110, MCA, is amended to read:

"53-30-110. Expense of trial for offenses committed in prison. (1) Whenever a trial of any person takes place under any of the provisions of 45-7-306 ~~and~~ or whenever a prisoner in the state prison is tried for any crime committed in prison, the county clerk of the county where the trial is held shall make out a statement of all the costs incurred by the county for the trial of the case and of guarding and keeping the prisoner~~, properly~~. The statement must be certified by a district judge of the county.

(2) The statement must be sent to the department of corrections for its approval. After ~~such~~ the approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the trial was held.

(3) Public defender costs, if any, must be paid pursuant to the Montana Public Defender Act provided for in [sections 1 through 4 and 6 through 14]."

Section 62. Section 61-8-731, MCA, is amended to read:

"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) sentencing the person to the department of corrections for placement in an appropriate correctional facility or program for a term of 13 months. The court shall order that if the person successfully completes a residential alcohol treatment program operated or approved by the department of corrections, the remainder of the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may not be deferred or suspended, and the person is not eligible for parole.

(b) sentencing the person to either the department of corrections or the Montana state prison or Montana women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the term imposed under subsection (1)(a); and

(c) a fine in an amount of not less than $1,000 or more than $10,000.

(2) The department of corrections may place an offender sentenced under subsection (1)(a) in a residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

(3) The court shall, as a condition of probation, order:

(a) that the person abide by the standard conditions of probation promulgated by the department of corrections;

(b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section;

(c) that the person may not frequent an establishment where alcoholic beverages are served;

(d) that the person may not consume alcoholic beverages;

(e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

(f) that the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(g) that the person submit to random or routine drug and alcohol testing; and

(h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system.

(4) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of ~~court-appointed~~ assigned counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(f) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(e).

(5) Following initial placement of a defendant in a treatment facility under subsection (2), the department of corrections may, at its discretion, place the offender in another facility or program.

(6) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to persons sentenced under this section."

Section 63. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor ~~is to~~ must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if ~~he~~ the minor is 14 ~~or more~~ years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the

date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the ~~interest~~ interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, ~~it~~ the court may ~~appoint an attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor~~, giving consideration to the preference of the minor if the minor is 14 years of age or older. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose~~."

Section 64. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 ~~or more~~ years of age or older, may petition for removal of a guardian on the ground that removal would be in the best ~~interest~~ interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may ~~appoint an attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel under the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor~~, giving consideration to the preference of the minor if the minor is 14 or more years of age~~."

Section 65. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in ~~his~~ the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The

allegedly incapacitated person may have counsel of ~~his~~ the person's own choice or the court may, in the interest of justice, appoint an appropriate official or ~~attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent ~~him~~ the person in the proceeding~~.~~. The official or assigned counsel ~~who shall have~~ has the powers and duties of a guardian ad litem.

(3) The person alleged to be incapacitated ~~shall~~ must be examined by a physician appointed by the court who shall submit ~~his~~ a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that ~~he~~ the person will be detained or reside if the requested appointment is made and submit ~~his~~ the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in ~~his~~ the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon ~~his~~ the person's condition. ~~He~~ The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or ~~his~~ the person's counsel ~~so~~ requests it."

Section 66. Section 72-5-322, MCA, is amended to read:

"**72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes that the guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment. However, the order may not forcibly detain the ward against the ward's will for more than 72 hours.

(2) The ward is entitled to ~~an appointment~~ the assignment of counsel, in accordance with the provisions of the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], and a hearing along with all the other rights guaranteed to a person with a mental disorder and who requires commitment under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

Section 67. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If~~,~~ at any time in the proceeding~~,~~ the court determines that the interests of the minor are or may be inadequately represented, ~~it~~ the court may ~~appoint an attorney~~ order the office of state public defender, provided for in [section 7], to assign counsel pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14], to represent the minor~~, giving consideration to the choice of the minor if 14 years of age or older~~. ~~A lawyer appointed by the court~~ Counsel assigned to represent a minor also has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of ~~his~~ the person's own choice, the court ~~must appoint a lawyer~~ shall order the office of state public defender, provided for in [section 7], to assign counsel to represent ~~him~~ the person pursuant to the Montana Public Defender Act, [sections 1 through 4 and 6 through 14]. Assigned counsel ~~who then~~ has the powers and duties of a guardian ad litem. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

Section 68. Implementation. (1) The governor shall appoint the members of the public defender commission established pursuant to [section 5] no later than July 1, 2005.

(2) The department of administration shall provide staff support to the commission beginning July 1, 2005, and continuing until the commission hires a chief public defender and until the chief public defender hires necessary staff for the commission and the office of state public defender.

(3) By December 31, 2005, the commission shall hire a chief public defender and issue any requests for proposals for consulting services and technical assistance that may be needed to help establish the office of

state public defender provided in [section 7].

(4) Standards and procedures required to implement the provisions of [sections 1 through 4 and 6 through 14] must be established, and the office of state public defender must be opened by no later than July 1, 2006.

(5) During fiscal year 2006, a commission member is entitled to $50 for each day that the member spends conducting the official business of the commission.

(6) The department of administration shall assist the commission in developing a public defender information technology system that utilizes existing resources as much as possible and that interfaces with state executive branch, judicial branch, and local computer systems to the extent necessary and practicable to ensure that data required to effectively manage public defender caseloads and track costs can be efficiently collected and analyzed.

Section 69. Transition -- transfer of county and city employees to state employment -- rights. (1) Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in [section 7]. Transferred employees become state employees on July 1, 2006.

(2) All transferred employees become subject to the state classification plan on July 1, 2006, except those specifically exempted under [section 7(2) and (3)(a)].

(3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.

(4) An employee's compensation may not be reduced as the result of the transfer to the state classification plan.

(5) This section does not preserve the right of any former county or city employee to any salary or compensation, including longevity benefits, that was not accrued and payable as of June 30, 2006.

(6) A transferred employee may elect to become a member of the state employee benefit plan beginning July 1, 2006, or remain on the employee's county or city benefit plan through the remainder of the plan year in effect on June 30, 2006. For an employee who elects to remain on a county or city benefit plan, the monthly state contribution toward insurance benefits must be transferred to the county or city benefit plan. Any benefit costs in excess of the state contribution must be paid by the employee.

(7) Accumulated sick and vacation leave and years of service with a county or city must be transferred fully to the state and become an obligation of the state on July 1, 2006. On January 1, 2007, and on January 1, 2008, the counties and cities with office of public defender employees who are transferred to state employment by this section shall pay the state 12.5% of the sick leave accrual and 50% of vacation leave accrual for each employee who is transferred to state employment. The transferred employees shall retain their accumulated sick

and vacation leave. Any liability for accumulated compensatory time of employees who are transferred from county or city employment to state employment under this section is not transferred to the state and remains an obligation of the county or city that employed the employee prior to the transfer, subject to federal law and the county's or city's personnel policies.

(8) A transferred employee who is not already covered by the public employees' retirement system provided in Title 19, chapter 3, becomes a new member of the public employees' retirement system on July 1, 2006, and is subject to the provisions of Title 19, chapter 3.

(9) A collective bargaining agreement in effect on July 1, 2006, may not be construed as binding on the state. However, transferred employees are entitled to organize and collectively bargain pursuant to Title 39, chapter 31.

Section 70. Transition of appellate defender commission and office. (1) The terms of members of the appellate defender commission established in 2-15-1020 terminate on June 30, 2006, when that section is repealed.

(2) Commission staff in the office of appellate defender established pursuant to the Appellate Defender Act in 46-8-210 through 46-8-213 must be officially transferred to the office of state public defender established pursuant to [section 7]. The transfer is effective July 1, 2006, at which time the position of chief appellate defender becomes exempt from the classification and pay plan pursuant to 2-18-103 and [section 7(3)(a)(ii)]. The compensation and benefits of the chief appellate defender and other staff of the office of appellate defender may not be reduced as a result of this transfer and the chief appellate defender and other staff of the office of appellate defender remain entitled to all compensation, rights, and benefits accrued as of June 30, 2006.

(3) The appellate defender commission and the public defender commission shall work together to provide that the duties and responsibilities of the appellate defender commission and the caseload of the staff of the office of appellate defender are transferred to the public defender commission and office of state public defender in a manner that ensures continuity of services. On July 1, 2006, all work of the appellate defender commission must officially be transferred to the supervision of the public defender commission and the chief public defender.

(4) Subject to the provisions of [section 5], a member of the appellate defender commission may be appointed by the governor to simultaneously serve on the public defender commission and the appellate defender commission until the appellate defender commission terminates pursuant to this section. A member serving on both commissions simultaneously is entitled to the compensation provided for the public defender commission in [section 68(5)] when engaged in the official duties of the public defender commission, provided that expenses paid pursuant to 2-18-501 through 2-18-503 may not be paid twice for the same period of time.

Section 71. Rights to property. (1) Subject to subsection (2), office equipment, computer equipment, furniture, and fixtures that are owned by a county or city and used by employees of a public defender office on June 30, 2006, remain the property of the county or city unless otherwise agreed upon by the county or city and the state.

(2) (a) An employee of a county or city public defender office who becomes a state employee under [section 69] retains the right to use all property relating to the functions of the office and being used by the employee on June 30, 2006. The property includes records, office equipment, computer equipment, supplies, contracts, books, papers, documents, maps, grant and earmarked account balances, vehicles, and all other similar property. However, the employee may not use or divert money in a fund or account for a purpose other than as provided by law.

(b) Whenever the state replaces office equipment, computer equipment, furniture, or fixtures used as provided in subsection (2)(a) and still owned by a county or city, the right to use the replaced property reverts to the county or city.

(3) This section does not apply to property owned by the federal government.

Section 72. Implementation -- determination of actual costs -- legislative audit -- report. (1) The legislature's intent is to provide that:

(a) funding responsibilities for public defender services pursuant to [sections 1 through 4 and 6 through 14] will be shared by state and local government; and

(b) the counties, consolidated governments, and cities will pay their share of costs through a reduction in the county's, consolidated government's, or city's base entitlement share under 15-1-121.

(2) To fulfill the intent of subsection (1) for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, Flathead County, and Yellowstone County, an audit, by or at the direction of the legislative auditor, must be conducted on all actual costs for public defender services in district court and justice's court proceedings incurred from July 1, 1998, through June 30, 2004, for which records exist. The audit must separate the costs by expenditure category and distinguish between costs paid by a county and costs paid or reimbursed by the state.

(3) Each county audited under subsection (2) shall reimburse the legislative auditor for 50% of the cost of the audit for that county.

(4) By April 30, 2006, the results of the audit must be reported to the governor's budget office, the legislative audit committee, the legislative finance committee, and the law and justice interim committee.

(5) The law and justice interim committee shall prepare legislation to be introduced in the 2007 legislative

session that will amend 15-1-121 to provide that the base entitlement share for Cascade County, Gallatin County, Lewis and Clark County, Missoula County, Flathead County, and Yellowstone County is adjusted by an appropriate amount arrived at based on the audit and in consultation with the legislative finance committee, the legislative audit committee, representatives of the counties, the governor's office, the American civil liberties union, the attorney general's office, and all other interested and participating parties.

(6) (a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services in [this act] for the same time period.

(b) The results of the comparison must be presented to the governor, legislative finance committee, law and justice interim committee, and supreme court by September 1 of the following fiscal year.

(7) As used in this section:

(a) "actual costs" means all expenditures by a county for public defender services in justice court and all expenditures by a county for public defender services in district court that were not reimbursed by the office of court administrator pursuant to 3-5-901; and

(b) "public defender services" means all services and support associated with providing defendants in district court or justice court proceedings with assigned, appointed, or contracted attorneys, including:

(i) compensation;

(ii) personal expenses, including travel, meals, and lodging;

(iii) office operating costs, including rent, utilities, supplies, postage, copying, computer systems, and other office operating costs;

(iv) professional and paraprofessional support services, including services provided by investigators, paralegals, researchers, and secretaries;

(v) services required to support a defense, including transcripts, witnesses, and other support;

(vi) professional support, including professional education and training;

(vii) costs of psychiatric evaluations under 46-14-202 and 46-14-221, including the cost of examinations and other associated expenses; and

(viii) other services or support provided by the county to provide assigned, appointed, or contracted defense counsel in justice court and district court proceedings.

Section 73. Interim report. During fiscal year 2007, the public defender commission established in [section 5] shall make regular progress reports to the governor, legislative finance committee, law and justice interim committee, legislative audit committee, and supreme court regarding the operation and administration of the

statewide public defender system.

Section 74. Repealer. Sections 2-15-1020, 7-6-4023, 46-8-111, 46-8-201, 46-8-202, 46-8-210, 46-8-211, 46-8-212, and 46-8-213, MCA, are repealed.

Section 75. Codification instruction. (1) [Sections 1 through 4 and 6 through 14] are intended to be codified as a new title in the Montana Code Annotated.

(2) [Section 5] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 5].

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

Section 76. Directions to code commissioner. Whenever references to court-appointed counsel, court-appointed attorney, appointed counsel, or appointed attorney appear in legislation enacted by the 2005 legislature, the code commissioner is directed to change the references to the appropriate references to assigned counsel or assigned attorney.

Section 77. Coordination instruction. If [this act] is passed and approved and it includes a section that amends 15-1-121(3)(a)(i) and:

(1) if House Bill No. 223 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 223 is void;

(2) if House Bill No. 334 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 334 is void;

(3) if House Bill No. 671 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 671 is void; and

(4) if Senate Bill No. 67 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in Senate Bill No. 67 is void.

Section 78. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 79. Three-fifths vote required. Because 15-1-121(3)(a)(i), as amended in this bill, reduces the amount of entitlement share payments, 15-1-121(9), as amended in this bill, requires a vote of three-fifths of the

Section 77. Coordination instruction. If [this act] is passed and approved and it includes a section that amends 15-1-121(3)(a)(i) and:

(1) if House Bill No. 223 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 223 is void;

(2) if House Bill No. 334 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 334 is void;

(3) if House Bill No. 671 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in House Bill No. 671 is void; and

(4) if Senate Bill No. 67 is passed and approved and it includes a section that amends 15-1-121(3)(a)(i), then the amendment to 15-1-121(3)(a)(i) in Senate Bill No. 67 is void.

Section 78. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 79. Three-fifths vote required. Because 15-1-121(3)(a)(i), as amended in this bill, reduces the amount of entitlement share payments, 15-1-121(9), as amended in this bill, requires a vote of three-fifths of the members of each house of the legislature for passage of the amendment of 15-1-121.

Section 80. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 17 through 19, 24 through 29, 34 through 67, and 74] are effective July 1, 2006.

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